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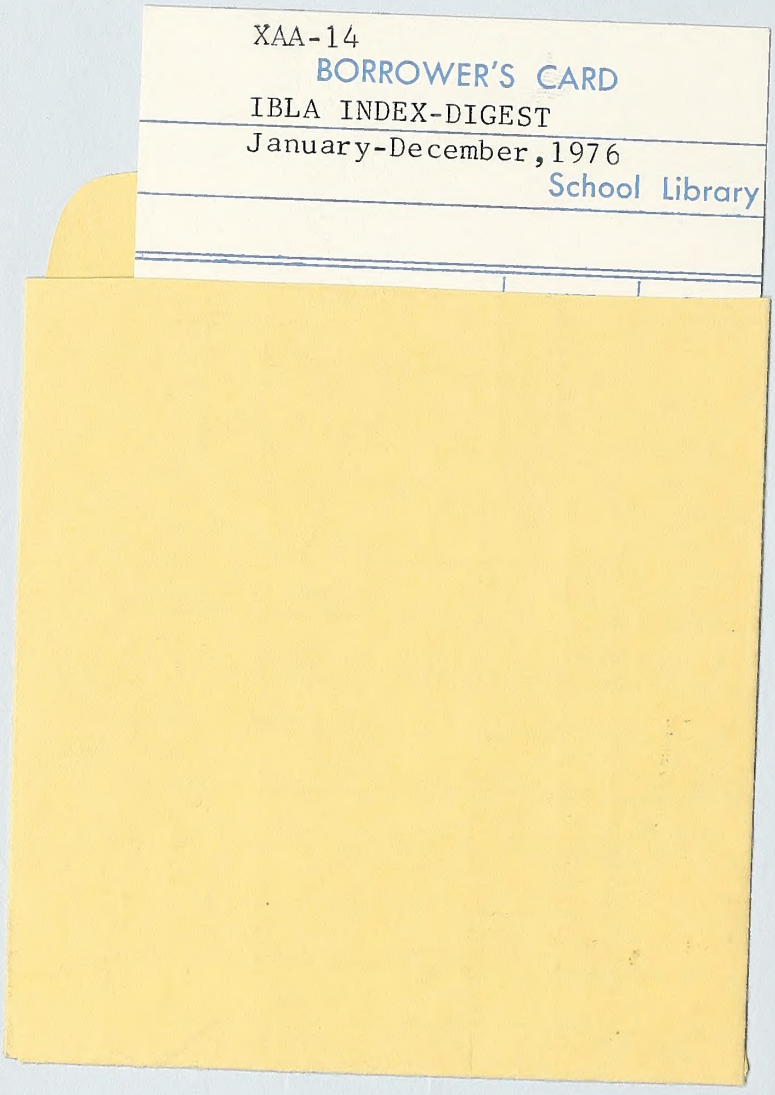
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UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON, D. C. 20240

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INDEX-DIGEST

JANUARY - DECEMBER 1976

This index-digest covers all the published and all the important unpublished decisions and opinions of the Department of the Interior for the period from January 1 through September 30, 1976, rendered in the Office of Hearings and Appeals, Ballston Towers, Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203 and in the Office of the Solicitor, Interior Building, 18th and C Streets, N.W., Washington, D. C. 20240.

Decisions and opinions cited as appearing in 83 I.D. are published and copies may be obtained by subscription from the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402. Other decisions and opinions are unpublished and copies may be obtained from the Office of Hearings and Appeals or the Office of the Solicitor as provided in 43 CFR Part 2.

Editor: Vera E. Burgin; Compositors: Dan Roth, Carole Nicholson

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The California Co., 66 I.D. 54 (1959)

The California Co. v. Stewart L. Udall, Civil No. 980-59. Judgment for defendant, 187 F. Supp. 445 (1960); aff'd., 296 F. 2d 384 (1961).

In the Matter of Cameron Parish, Louisiana, Cameron Parish Police Jury & Cameron Parish School Board, June 3, 1968 appealed by Secretary July 5, 1968, 75 I.D. 289 (1968).

Cameron Parish Police Jury v. Stewart L. Udall, et al., Civil No. 14,206, W. D. La. Judgment for plaintiff, 302 F. Supp. 689 (1969); order vacating prior order issued November 5, 1969.

Jack E. Carl, A-27870, A-27900 (April 23, 1959)

Jack E. Carl v. Fred A. Seaton, Civil No. 3069-59. Judgment for defendant, June 20, 1961; aff'd., 309 F. 2d 653 (1962).

Carson Construction Co., 62 I.D. 422 (1955)

Carson Construction Co. v. U.S., Ct. Cl. No. 487-59. Judgment for plaintiff, December 14, 1961; no appeal.

Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)
See William D. Sexton, et al.

John Jay Casey, IBLA 74-196, Order decided, January 29, 1975.

John Jay Casey v. U.S., Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. R-74-153-RDF, D. Nev. Dismissed without prejudice, December 23, 1974.

C. F. Lytle Co., IBCA-172 (September 30, 1958)

C. F. Lytle Co. v. U.S., Ct. Cl. No. 174-59. Compromised.

Estate of George Chahesenah, IA-T-4 (June 20, 1967)

Viola Atewooftakewa (Tate), et al., v. Udall, Civil No. 67-323, W. D. Okla. Judgment for plaintiff, 277 F. Supp. 464 (1967); rev'd. & remanded to dismiss for want of jurisdiction, 407 F. 2d 394 (10th Cir. 1969); cert. granted, 396 U.S. 815 (1969); rev'd., 397 U.S. 598 (1970).

Chargeability of Acreage Embraced in Oil and Gas Lease Offers, 71 I.D. 337 (1964)
Shell Oil Co., A-30575 (October 31, 1966)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulation of dismissal filed August 19, 1968.

Chemi-Cote Perlite Corp. v. Arthur C. W. Bowen, 72 I.D. 403 (1965)

Bowen v. Chemi-Cote Perlite, No. 2 CA-Civ. 248, Ariz. Ct. App. Decision against the Dept. by the lower court aff'd., 423 P. 2d 104 (1967); rev'd., 432 P. 2d 435 (1967).

Christy Corp., IBCA-461 & 569 (June 20, 1966)

Christy Corp. v. U.S., Ct. Cl. No. 291-66. Judgment for defendant, Harbor Boat Building Co., 387 F. 2d 395 (1967); compromised, July 10, 1968.

U.S. v. Harco Engineering, A Division of Harbor Boat Building Co., Civil No. 68-827-S, D. Cal. Dismissed with prejudice, February 24, 1970.

Citizens Committee to Save Our Public Lands, IBLA 76-484 (Still pending)

Citizens Committee to Save our Public Lands, Hastings Environmental Law Society v. Thomas Kleppe, Secretary of the Interior, et al., Civil No. C-76032 SC, D. Cal. Suit pending.

Stephen H. Clarkson, 72 I.D. 138 (1965)

Stephen H. Clarkson v. U.S., Cong. Ref. 5-68. Trial Commr's. report adverse to U.S. issued December 16, 1970; Chief Commr's. report concurring with the Trial Commr's. report issued April 13, 1971. P.L. 92-108 enacted accepting the Chief Commr's. report.

Clear Gravel Enterprises, Inc., A-27967, A-27970 (December 29, 1959)

The Dredge Corp. v. E. J. Palmer, No. 366, D. Nev. Judgment for defendant, September 25, 1962; remanded, 338 F. 2d 456 (9th Cir.

1964); judgment for plaintiff, August 8, 1966; rev'd. and remanded with direction to enter judgments for defendants, 398 F. 2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

Appeal of COAC, Inc., 81 I.D. 700 (1974)

COAC, Inc. v. U.S., Ct. Cl. No. 395-75. Suit pending.

P. Cobb, A-29769 (May 27, 1964)

P. and Osro Cobb v. U.S., Civil No. 967, W. D. Ark. Motion to dismiss denied, 240 F. Supp. 574 (1965); dismissed, January 17, 1966.

Mrs. Hannah Cohen, 70 I.D. 188 (1963)

Hannah and Abram Cohen v. U.S., Civil No. 3158, D. R. I. Compromised.

Barney R. Colson, 70 I.D. 409 (1963)

Barney R. Colson, et al. v. Stewart L. Udall, Civil No. 63-26-Civ.-Oc, M. D. Fla. Dismissed with prejudice, 278 F. Supp. 826 (1968); aff'd., 428 F. 2d 1046 (5th Cir. 1970); cert. denied, 401 U.S. 911 (1971).

Barney R. Colson, 7 IBLA 40 (1972)

Barney R. Colson v. Rogers C. B. Morton, Civil No. 1960-72. Dismissed with prejudice, February 7, 1974; Per curiam decision, aff'd., January 24, 1975; no petition.

Columbian Carbon Co., Merwin E. Liss, 63 I.D. 166 (1956)

Merwin E. Liss v. Fred A. Seaton, Civil No. 3233-56. Judgment for defendant, January 9, 1958; appeal dismissed for want of prosecution, September 18, 1958, D. C. Cir. No. 14,647.

Commercial Metals Co., IBCA-99 (August 27, 1959)

Commercial Metals Co. v. U.S., Ct. Cl. No. 458-59. Judgment for plaintiff, June 16, 1966.

Appeal by the Confederated Salish & Kootenai Tribes of the Flathead Reservation, in the Matter of the Enrollment of Mrs. Elverna Y. Clairmont Baciarelli, 77 I.D. 116 (1970)

Elverna Yevonne Clairmont Baciarelli v. Rogers C. B. Morton, Civil No. C-70-2200 SC, D. Cal. Judgment for defendant, August 27, 1971; aff'd., 481 F. 2d 610 (9th Cir. 1973); no petition.

Consolidated Mines & Smelting Co., et al., A-30760 (September 19, 1967)

H. D. Brown v. U.S. & Walter Hickel, Civil No. 69-2332-F, D. Cal. Dismissed with prejudice, March 20, 1970; reconsideration denied, May 20, 1970.

Constitution Petroleum Co., Inc., et al., 25 IBLA 319 (1976)

Constitution Petroleum Co., Arrow Petroleum Co., & East Utah Mining Co. v. Thomas S. Kleppe, et al., Civil No. C-76-257, D. Utah. Suit pending.

Appeal of Continental Oil Co., 68 I.D. 337 (1961)

Continental Oil Co. v. Stewart L. Udall, et al., Civil No. 366-62. Judgment for defendant, April 29, 1966; aff'd., February 10, 1967; cert. denied, 389 U.S. 839 (1967).

Estate of Hubert Franklin Cook, 5 IBIA 42; 83 I.D. 75 (1976)

Leroy V. & Roy H. Johnson, Marlene Johnson Exendine & Ruth Johnson Jones v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV-76-0362-E, W.D. Okla. Suit pending.

Autrice C. Copeland,
See Leslie N. Baker, et al.

E. L. Cord, Donald E. Wheeler, Edward D. Neuhoff, 80 I.D. 301 (1973)

Edward D. Neuhoff & E. L. Cord v. Rogers C. B. Morton, Secretary of the Interior, Civil No. R-2921, D. Nev. Dismissed, September 12, 1975 (opinion); appeal docketed, November 14, 1975.

Jay Frederick Cornell, 4 IBLA 11 (1971)

Jay F. Cornell v. Rogers C. B. Morton, Civil No. A-5-72, D. Alas. Judgment for defendant, March 23, 1973; aff'd., September 3, 1974; no petition.

William D. Cornia, et al., Wyoming 4-63-1, etc., Utah 1-63-1, etc., (August 25, 1965)

William D. Cornia, et al. v. Stewart L. Udall, Civil No. 4-66, N. D. Utah. Dismissed with prejudice, September 1, 1967.

Cortella Coal Corp., et al., Alaska Mineral Exploration Co., 13 IBLA 158 (1973)

Cortella Coal Corp. & Alaska Mineral Exploration Co. v. Curtis V. McVee, State Dir., Bureau of Land Management, State of Alaska, Burton W. Silcock, Dir., Bureau of Land Management & Rogers C. B. Morton, Secretary of the Interior, Civil No. A-169-73, D. Alas. Dismissed with prejudice, January 13, 1976.

Appeal of Cosmo Construction Co., 73 I.D. 229 (1966)

Cosmo Construction Co., et al. v. U.S., Ct. Cl. No. 119-68. Ct.

opinion setting case for trial on the merits issued March 19, 1971.

Estate of Jonah Crosby (Deceased Wisconsin Winnebago Unallotted), 81 I.D. 279 (1974)

Robert Price v. Rogers C. B. Morton, individually & in his official capacity as Secretary of the Interior & his successors in office, et al., Civil No. 74-0-189, D. Neb. Remanded to the Secretary for further administrative action, December 16, 1975.

Elizabeth Barndt Crouse, et al., A-30542 (March 7, 1968)

Elizabeth Barndt Crouse, et al. v. K. Ranch, Inc., Udall, et al., Civil No. R-2063, D. Nev. Dismissed without prejudice, April 15, 1969; no appeal.

Elsie May Pikok Crow, 3 IBLA 114 (1971)

Elsie May Pikok Crow v. U.S., & Rogers C. B. Morton, Civil No. F-27-71 Civ., D. Alas. Dismissed, July 13, 1972; no appeal.

Estate of George Daniels, IA-1295 (November 2, 1965)

Elizabeth Daniels, et al. v. Johnson, Supt., Osage Indian Agency & Udall, Civil No. 6443, N. D. Okla. Dismissed with prejudice, January 9, 1967.

Oma Belle Day, et al., AA-5702 (December 30, 1969)

Oma Belle Day v. Walter J. Hickel, et al., Civil No. A-9-70, D. Alas. Judgment for defendant, February 19, 1971; aff'd., 481 F. 2d 473 (9th Cir. 1973); no petition.

John C. deArmas, Jr., P. A. McKenna, 63 I.D. 82 (1956)

Patrick A. McKenna v. Clarence A. Davis, Civil No. 2125-56. Judgment for defendant, June 20, 1957; aff'd., 259 F. 2d 780 (1958); cert. denied, 358 U.S. 385 (1958).

The Dredge Corp., 64 I.D. 368 (1957)
65 I.D. 336 (1958)

The Dredge Corp. v. J. Russell Penny, Civil No. 475, D. Nev. Judgment for defendant, September 9, 1964; aff'd., 362 F. 2d 889 (9th Cir. 1966); no petition. See also Dredge Co. v. Husite Co., 369 P. 2d 676 (1962); cert. denied, 371 U.S. 821 (1962).

Eastern Associated Coal Corp., 82 I.D. 22 (1975)

International Union of United Mine Workers of America v. Rogers C. B. Morton, Secretary of the Interior, No. 75-1107, United States Ct. of Appeals, D. C. Cir. Dismissed by Stipulation, October 29, 1975.

Eastern Associated Coal Corp., 82 I.D. 311 (1975)

United Mine Workers of America v. Interior Board of Mine Operations Appeals, No. 75-1727, United States Ct. of Appeals, D. C. Cir. Petition for Review withdrawn, July 28, 1975.

Lawrence Edwards, A-30696, A-30705 (April 21, 1967)

Lawrence Edwards v. Stewart Udall, Civil No. 2714, D. Mont. Rev'd. & remanded, November 18, 1968; stipulation for dismissal & order filed August 4, 1970.

Appeal of Eklutna, Inc., 1 ANCAB 165; 83 I.D. 500 (1976)

State of Alaska v. Alaska Native Claims Appeal Board, et al., Civil No. A76-236, D. Alas. Suit pending.

Heldina Eluska, 21 IBLA 292 (1975)

Heldina Eluska, individually & on behalf of all others similarly situated v. Thomas Kleppe, individ. & in his official capacity as Secretary of the Interior, Civil No. A-76-26 CIV, D. Alas. Suit pending.

Henry J. Ernst, A-27196 (November 7, 1955)

Henry J. Ernst v. Secretary of the Interior, Civil No. 9303, D. Alas. Return of service quashed & complaint dismissed, December 28, 1956 (opinion); aff'd., 244 F. 2d 344 (9th Cir. 1957).

David H. Evans v. Ralph C. Little, A-31044 (April 10, 1970), 1 IBLA 269; 78 I.D. 47 (1971)

David H. Evans v. Rogers C. B. Morton, Civil No. 1-71-41, D. Idaho. Order granting motion of Ralph C. Little for leave to intervene as a party defendant issued June 5, 1972. Judgment for defendants, July 27, 1973; aff'd., March 12, 1975; no petition.

Elsie V. Farington, 9 IBLA 191 (1973)

Elsie V. Farington v. Rogers C. B. Morton, Secretary of the Interior, Civil No. S2768, E. D. Cal. Dismissed with prejudice, December 5, 1973 (opinion); no appeal.

John J. Farrelly, et al., 62 I.D. 1 (1955)

John J. Farrelly & The Fifty-One Oil Co. v. Douglas McKay, Civil No. 3037-55. Judgment for plaintiff, October 11, 1955; no appeal.

Ralph G. Faulkner, et al., 26 IBLA 110 (1976)

Ralph G., John L., Laura Jo, R. Fred & Susan L. Faulkner v. Thomas S. Kleppe, Secretary of the Interior, Curt Berklund, Director, Bureau of Land

Management, et al., Civil No. 1-77-99, D. Idaho. Suit pending.

Chester H. Ferguson et al., 20 IBLA 224 (1975)

Chester H. Ferguson, Stella Ferguson Thayer & Howell L. Ferguson v. Rogers C. B. Morton, Secretary of the Interior et al., Civil No. 75-404-Civ-T-K, M. D. Fla. Dismissed without prejudice, July 16, 1975.

Administrative Appeal of Hannah Finnesand, A Native Alaska Indian v. Commissioner of Indian Affairs, 3 IBIA 263 (1975)

Hannah Finnesand and Flora Rondeau for themselves and all others similarly situated, and Flora Rondeau as next friend for Deborah Rondeau, Mitchell Rondeau & David Rondeau for themselves and all others similarly situated v. Rogers C. B. Morton, et al., Civil No. A75-42, D. Alas. Suit pending.

Carl E. Forsberg, et al., A-29158 et al., (August 19, 1963)

Carl E. Forsberg v. Stewart L. Udall, Civil No. 63-472, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, October 13, 1966. See Linn Land Co. v. Stewart L. Udall.

Robert K. Foster, et al., A-29857 (June 15, 1964)

Robert K. Foster, et al. v. Manager, Riverside Land Office, et al., Civil No. 64-1110-WM, S. D. Cal. Judgment for defendant, 296 F. Supp. 1348 (1966); no appeal.

T. Jack Foster, 75 I.D. 81 (1968)

Gladys H. Foster, Executrix of the estate of T. Jack Foster v. Stewart L. Udall, Boyd L. Rasmussen, Civil No. 7611, D. N.M. Judgment for plaintiff, June 2, 1969; no appeal.

Franco Western Oil Co., et al., 65 I.D. 316, 427 (1958)

Raymond J. Hansen v. Fred A. Seaton, Civil No. 2810-59. Judgment for plaintiff, August 2, 1960 (opinion); no appeal.

See Safarik v. Udall, 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Myrtle A. Freer, et al., A-29221 (April 2, 1963)

Willis W. Ritter v. Rogers C. B. Morton, et al., Civil No. 1-70-74, D. Idaho. Judgment for plaintiff, November 14, 1972.

Coral V. Funderburg, A-30514 (June 14, 1966)

Coral V. Funderburg v. Stewart L. Udall, et al., Civil No. 2818 ND, S. D. Cal. Dismissed with prejudice, February 15, 1967; aff'd., 396 F. 2d 638 (9th Cir. 1968); no petition.

Gabbs Exploration Co., 67 I.D. 160 (1960)

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 219-61. Judgment for defendant, December 1, 1961; aff'd., 315 F. 2d 37 (1963); cert. denied, 375 U.S. 822 (1963).

Bernard J. & Myrle A. Gaffney, A-30327 (October 28, 1965)

Bernard J. & Myrle A. Gaffney v. Stewart L. Udall, Civil No. 3-66-22, D. Minn. Stipulated dismissal without prejudice, January 17, 1969; no appeal.

Estate of Temens (Timens) Vivian Gardafee, 5 IBIA 113; 83 I.D. 216 (1976)

Confederated Tribes & Bands of the Yakima Indian Nation v. Thomas Kleppe, Secretary of the Interior, & Erwin Ray, Civil No. C-76-200, E.D. Wash. Suit pending.

Stanley Garthofner, Duvall Bros., 67 I.D. 4 (1960)

Stanley Garthofner v. Stewart L. Udall, Civil No. 4194-60. Judgment for plaintiff, November 27, 1961; no appeal.

Estate of Gei-kaun-mah (Bert), 82 I.D. 408 (1975)

Juanita Geikaunmah Mammedaty & Imogene Geikaunmah Carter v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CIV 75-1010-E, W. D. Okla. Judgment for defendant, April 23, 1976.

General Excavating Co., 67 I.D. 344 (1960)

General Excavating Co. v. U.S., Ct. Cl. No. 170-62. Dismissed with prejudice, December 16, 1963.

Nelson A. Gerttula, 64 I.D. 225 (1957)

Nelson A. Gerttula v. Stewart L. Udall, Civil No. 685-60. Judgment for defendant, June 20, 1961; motion for rehearing denied, August 3, 1961; aff'd., 309 F. 2d 653 (1962); no petition.

Charles B. Gonsales, A-27944 (April 22, 1959)

Charles B. Gonsales v. Frederick A. Seaton, Civil No. 2497-59. Plaintiff's amended complaint dismissed with prejudice, January 12, 1962; no appeal.

Charles B. Gonsales et al., Western Oil Fields, Inc., et al., 69 I.D. 236 (1962)

Pan American Petroleum Corp. & Charles B. Gonsales v. Stewart L. Udall, Civil No. 5246, D. N. M. Judgment for defendant, June 4, 1964; aff'd., 352 F. 2d 32 (10th Cir. 1965); no petition.

Charles B. Gonsales, A-29010 (March 27, 1963)

Charles B. Gonsales v. Stewart L. Udall, Civil No. 5378 D. N. M. Dismissed with prejudice, November 12, 1963.

John Gonzales, A-30604 (September 26, 1968)

John Gonzales v. Stewart Udall, Civil No. A-128-68, D. Alas. Order to Stay Proceedings for 6 months filed June 3, 1970; judgment for plaintiff, June 30, 1972; upon stipulation of the parties, appeal dismissed, November 30, 1972.

James C. Goodwin, 80 I.D. 7 (1973)

James C. Goodwin v. Dale R. Andrus, State Dir., Bureau of Land Management, Burton W. Silcock, Dir., Bureau of Land Management, & Rogers C. B. Morton, Secretary of the Interior, Civil No. C-5105, D. Colo. Dismissed, November 29, 1975 (opinion); appeal dismissed, March 9, 1976.

Ray Granat, et al., 25 IBLA 115 (1976)

Ray Granat v. Thomas S. Kleppe & the Department of the Interior, Civil No. C 76-274, D. Utah. Suit pending.

Estate of George Green, IA-T-11 (June 7, 1968)

Lillian Crenshaw, et al. v. Secretary, Civil No. 68-317, W. D. Okla. Dismissed, February 4, 1969; no appeal.

LaVonne E. Grewell, 23 IBLA 190 (1976)

LaVonne V. Grewell v. Thomas S. Kleppe, Secretary of the Interior, Civil No. C76-602V, W.D. Wash. Suit pending.

Grindstone Butte Project, 18 IBLA 16 (1974), 24 IBLA 49 (1976)

Grindstone Butte Project, et al. v. Thomas S. Kleppe, Secretary of the Interior, Curt Berklund, Director of the Bureau of Land Management, et al., Civil No. 1-76-173, D. Idaho. Suit pending.

Estate of James Growing Thunder, Fort Peck Allottee No. 2210, deceased, 3 IBIA 18 (1974)

Nancy Growing Thunder & Vernon Growing Thunder, Minors, by and through their next friend and Guardian Ad Litem, Dale Running Bear v. Rogers Morton, individually and as Secretary of the Interior, et al., Civil No. 74-73 BLG, D. Mont. Dismissed, March 15, 1976.

Gulf Oil Corp., 69 I.D. 30 (1962)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 2209-62. Judgment for defendant, October 19, 1962; aff'd., 325 F. 2d 633 (1963); no petition.

Gulf Oil Corp. et al., 21 IBLA 1 (1975)

Gulf Oil Corp. and Mobil Oil Corp. v. Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-2396, Section F, E. D. La. Suit pending.

Gustav Hirsch Organization, Inc., IBCA-175 (October 30, 1958)

Gustav Hirsch Organization, Inc. v. U.S., Ct. Cl. No. 416-59. Compromised.

Guthrie Electrical Construction, 62 I.D. 280 (1955), IBCA-22 (Supp.) (March 30, 1956)

Guthrie Electrical Construction Co. v. U.S., Ct. Cl. No. 129-58. Stipulation of settlement filed September 11, 1958. Compromised offer accepted and case closed October 10, 1958.

L. H. Hagood, et al., 65 I.D. 405 (1958)

Edwin Still, et al. v. U.S., Civil No. 7897, D. Colo. Compromise accepted.

William Hall, et al., A-30849, A-30852, A-30857 (September 16, 1968)

William Hall & Diane Hall v. Secretary of the Interior, Civil No. A-169-68, D. Alas. Dismissed, July 25, 1969; no appeal.

Lester J. Hamel, A-28830 (September 17, 1962)

Lester J. Hamel v. Neal D. Nelson et al., Civil No. 8565, N. D. Cal. Judgment for defendant, December 13, 1963 (opinion); judgment entered February 11, 1964; appeal docketed February 14, 1964; dismissed by plaintiff, March 20, 1964.

Raymond J. Hansen, et al., 67 I.D. 362 (1960)

Raymond J. Hansen, et al. v. Stewart L. Udall, Civil No. 3902-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Robert Schulein v. Stewart L. Udall, Civil No. 4131-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Raymond J. Hansen, A-30179 (March 5, 1965)

Mary L. Brandt and Natalie Z. Shell v. Stewart L. Udall, Civil No. 2659-ND, S. D. Cal. Dismissed, September 30, 1965; amended complaint filed November 15, 1965; judgment for defendant, June 7, 1966; dismissed for lack of jurisdiction, November 15, 1967; judgment for defendants, March 26, 1968; rev'd., 427 F. 2d 53 (9th Cir. 1970); no petition.

Mary L. Brandt & Natalie Z. Shell v. Stewart L. Udall, Civil No. 2715-ND, S. D. Cal. Dismissed, December 3, 1965.

Beverly Harrell, 12 IBLA 276 (1973)

Beverly Harrell v. A. John Hillsamer, Chief of Land & Minerals Operations, Bureau of Land Management for Nevada, & E. I. Rowland, State Dir., Bureau of Land Management, Nevada, Civil No. CIV-LV-2137, RDF, D. Nev. Dismissed, December 7, 1973; motion for new trial denied, February 6, 1974; no appeal.

Paul Harvey, et al. A-30552 (June 24, 1966)

Paul Harvey, Grace Ernest and Lalo Enriquez v. Stewart L. Udall, Civil No. 6753, D. N. M. Judgment for defendant, January 25, 1967; aff'd., 384 F. 2d 883 (10th Cir. 1967); no petition.

Billy K. Hatfield, et al. v. Southern Ohio Coal Co., 82 I.D. 289 (1975)

District 6 United Mine Workers of America, et al. v. U.S. Dept. of Interior Board of Mine Operations Appeals, No. 75-1704, U.S. Court of Appeals, D. C. Cir. Suit pending.

Headwaters Association, Protestant-Appellant Cabax Mills, et al., Intervenors, IBLA 76-68 remanded to Bureau of Land Management by Order, October 21, 1975; Appeal of Harold P. Canady, et al., IBLA 73-357, pending; Appeal of Elizabeth Freeman, IBLA 76-51, pending; Appeal of Alan Troxler, IBLA 74-215, pending; Appeal of Alan Winter, et al., IBLA 75-653, pending; Appeal of Carl Wittman, IBLA 76-14, pending.

Arthur Downing, Alan Winter, Alan Troxler & Headwaters v. Kent Frizzell, Acting Secretary of the Interior, et al., Civil No. 75-1128, D. Ore. Stipulated dismissal, December 30, 1976.

Hiko Bell Mining & Oil Co., 24 IBLA 255 (1976)

Hiko Bell Mining & Oil Co., a Utah Corp. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. C 76-138, D. Utah. Suit pending.

Kenneth Holt, an individual, etc., 68 I.D. 148 (1961)

Kenneth Holt, etc. v. U.S., Ct. Cl. No. 162-62. Stipulated judgment, July 2, 1965.

Hope Natural Gas Co., 70 I.D. 228 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall, et al., Civil No. 2109-63. Judgment for defendant, September 20, 1965; Per curiam decision, aff'd., April 28, 1966; no petition.

Elbert F. Howey, 15 IBLA 208 (1974)

Elbert F. Howey v. Rogers Morton, Secretary of the Interior, Civil No. A74-56, D. Alas. Dismissed with prejudice, October 16, 1975 (opinion); no appeal.

Estate of Alvin Hudson, 5 IBIA 174 (1976)

David Russell Hudson v. U.S., Thomas S. Kleppe, Secretary of the Interior, Veradine Reed Stearns, Lois Jean Reed Saxton, Mildred Reed Anderson, Ivan Stacy Reed Cleveland, Civil No. C76-227T, W.D. Wash. Suit pending.

Boyd L. Hulse v. William H. Griggs, 67 I.D. 212 (1960)

William H. Griggs v. Michael T. Solan, Civil No. 3741, D. Idaho. Stipulation for dismissal filed May 15, 1962.

Dan H. Hunter, Ray H. Albrechtsen, IBLA 70-79, 565, (Order of dismissal dated February 22, 1973), reconsideration denied by Order, June 1, 1973.

Dan H. Hunter & Mountain States Resources Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-393-73, D. Utah. Judgment for Defendant, December 17, 1974; aff'd., January 28, 1976.

Ray H. Albrechtsen & Mountain States Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-392-73, D. Utah. Judgment for plaintiff, March 31, 1976; appeal filed May 12, 1976.

Stanley W. Hutchinson v. Clyde W. Bishop, A-29693 (May 4, 1964)

Clyde W. Bishop v. Stewart L. Udall, Civil No. 1-65-54, D. Idaho. Judgment for plaintiff, July 7, 1966; no appeal.

John V. Hyrup, 15 IBLA 412 (1974)

John V. Hyrup v. Rogers C. B. Morton, Civil No. 74-689, D. Colo. Rev'd. & remanded for further administrative proceedings, 406 F. Supp. 214 (1976); appeal filed, January 14, 1976; final judgment entered May 12, 1976; appeal filed, July 7, 1976.

H & W Oil Co., 22 IBLA 313 (1975)

H & W Oil Co. v. Thomas S. Kleppe, Secretary of the Interior, Civil No. 763016, E.D. Ill. Judgment for defendant, November 29, 1976.

Idaho Desert Land Entries - Indian Hill Group, 72 I.D. 156 (1965), U.S. v. Ollie Mae Shearman, et al. - Idaho Desert Land Entries - Indian Hill Group, 73 I.D. 386 (1966)

Wallace Reed, et al. v. Dept. of the Interior, et al., Civil No. 1-65-86, D. Idaho. Order denying preliminary injunction, September 3, 1965; dismissed, November 10, 1965; amended complaint filed, September 11, 1967.

U.S. v. Raymond T. Michener, et al., Civil No. 1-65-93, D. Idaho. Dismissed without prejudice, June 6, 1966.

U.S. v. Hood Corp., et al., Civil No. 1-67-97, S. D. Idaho.

Civil Nos. 1-65-86 & 1-67-97 consolidated. Judgment adverse to U.S., July 10, 1970; rev'd., 480 F. 2d 634 (9th Cir. 1973); cert. denied, 414 U.S. 1064 (1973); dismissed with prejudice subject to the terms of the stipulation, August 30, 1976.

Appeal of Inter Helo, Inc., IBCA-713-5-68 (December 30, 1969), 82 I.D. 591 (1975)

John Billmeyer, etc. v. U.S., Ct. Cl. No. 54-74. Remanded with instructions to admit evidence, May 30, 1975.

Interpretation of the Submerged Lands Act, 71 I.D. 20 (1964)

Floyd A. Wallis v. Stewart L. Udall, Civil No. 3089-63. Dismissed with prejudice, March 27, 1968.

C. J. Iverson, 82 I.D. 386 (1975)

C. J. Iverson v. Kent Frizzell, Acting Secretary of the Interior & Dorothy D. Rupe, Civil No. 75-106-Blg, D. Mont. Stipulation for dismissal with prejudice, September 10, 1976.

J. A. Jones Construction Co., et al., IBCA-233 (June 17, 1960)

Palisades Contractors, et al. v. U.S., Civil No. 2247, D. Idaho. Settled.

J. A. Terteling & Sons, Inc., 64 I.D. 466 (1957)

J. A. Terteling & Sons, Inc. v. U.S., Ct. Cl. No. 114-59. Judgment for defendant, 390 F. 2d 926 (1968); remaining aspects compromised.

J. D. Armstrong Co., 63 I.D. 289 (1956)

J. D. Armstrong, Inc. v. U.S., Ct. Cl. No. 490-56. Plaintiff's motion to dismiss petition allowed, June 26, 1959.

Jensen-Rasmussen, et al., IBCA-363 (March 14, 1963)

Jensen-Rasmussen & Co. v. U.S., Civil No. 5963, W. D. Wash. Judgment for defendant, February 24, 1964; no appeal.

Dale Johnson, A-30806 (September 17, 1968)

Dale Johnson v. Stewart L. Udall, Secretary of the Interior, Civil No. A-135-68, D. Alas. Stipulated Dismissal, April 10, 1969; no appeal.

M. G. Johnson, 78 I.D. 107 (1971), U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974)

Menzel G. Johnson v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CN-LV-74-158, RDF, D. Nev. Suit pending.

Estate of Edward Alpheus Jones, 5 IBIA 138 (1976)

Robert Sam v. U.S., et al., Civil No. 76-0552. Dismissed as to defendants U.S., Department of the Interior & the Bureau of Indian Affairs, July 30, 1976; judgment for defendant Robert C. Sanshall, July 30, 1976.

Kenneth J. Kadow, et al., A-30053 (October 5, 1964)

Kenneth J. Kadow, et al. v. Stewart L. Udall, Secretary of the Interior, Civil No. A-1-65, D. Alas. Judgment for defendant, September 7, 1967; dismissed for lack of prosecution, February 2, 1968; no petition.

R. A. Keans, A-30183 (February 16, 1965)

R. A. Keans v. Stewart L. Udall, et al., Civil No. 2648-ND, S. D. Cal. Defendant's motion to dismiss granted, November 22, 1965; no appeal.

Estate of Kee-ah-tha-com-oke-quah, IA-974, 975 (September 16, 1965)

D. Q. (Bill) Couch v. Stewart L. Udall, Civil No. 66-282, W. D. Okla. Aff'd., 265 F. Supp. 848 (1967); aff'd., 404 F. 2d 97 (10th Cir. 1968); no petition.

Kerr McGee Corp., Cabot Corp., Felmont Oil Corp., and Case-Pomeroy Corp., 6 IBLA 108 (1972), Petition for Reconsideration denied, May 14, 1974.

Kerr-McGee Corp., Cabot Corp., Felmont Oil Corp., & Case-Pomeroy Oil Corp. v. Rogers C. B. Morton, et al., Civil No. 616-72. Dismissed with prejudice, October 22, 1974;

Estate of San Pierre Kilkaken (Sam Hill), 1 IBIA 299; 79 I.D. 583 (1972), 4 IBIA 242 (1975), 5 IBIA 12 (1976)

Christine Sam & Nancy Judge v. Thomas Kleppe, Secretary of the Interior, Civil No. C-76-14, E.D. Wash. Suit pending.

John J. King, A-28543 (October 13, 1960)

John J. King v. Stewart L. Udall, Civil No. 68-61. Judgment for plaintiff, November 8, 1961; rev'd., 308 F. 2d 650 (1962); no petition.

John J. King, et al., Fairbanks 033268, 033279 (September 25, 1964)

John J. King, et al. v. Stewart L. Udall, Civil No. 2750-64. Judgment for plaintiffs, 266 F. Supp. 747 (1967); on May 4, 1967, a stipulation of voluntary dismissal with prejudice sgd. by the plaintiffs and all other parties.

John J. King, Dorothy W. King, Fairbanks 034577 (October 26, 1965)

John J. and Dorothy W. King v. Stewart L. Udall, Civil No. A-6-66, D. Alas. Dismissed with prejudice, April 24, 1968.

Barbara G. Kirk and Marjorie G. Wright
See Dean Kirk

Dean Kirk, A-29018a (April 26, 1963), Barbara G. Kirk and Marjorie G. Wright, A-30022 (August 20, 1963)

George M. Larsen, et al. v. Stewart L. Udall, Civil No. 1651, D. Nev. Stipulation covering seven land entries; four are dismissed as moot, three are dismissed with prejudice.

Margaret L. & Allan D. Klatt, 23 IBLA 59 (1975)

Margaret L. Klatt v. Thomas S. Kleppe, Individually & in his official capacity as Secretary of the Interior, et al., Civil No. A76-44 CIV, D. Alas. Suit pending.

Anquita L. Kluenter, et al., A-30483, November 18, 1965
See Bobby Lee Moore, et al.

Leo J. Kottas, Earl Lutzenhiser, 73 I.D. 123 (1966)

Earl M. Lutzenhiser and Leo J. Kottas v. Stewart L. Udall, et al., Civil No. 1371, D. Mont. Judgment for defendant, June 7, 1968; aff'd., 432 F. 2d 328 (9th Cir. 1970); no petition.

Max L. Krueger, Vaughan B. Connelly, 65 I.D. 185 (1958)

Max Krueger v. Fred A. Seaton, Civil No. 3106-58. Complaint dismissed by plaintiff, June 22, 1959.

James M. Krumtum and Cale M. Shearer, A-30838 (December 21, 1967)

James M. Krumtum & Cale M. Shearer v. Udall, et al., Civil No. 6567, D. Ariz. Judgment for defendant, January 6, 1970; no appeal.

Joseph T. Kurkowski, 15 IBLA 13 (1974)

John & Ruth E. Melcher v. Edwin Zaidlicz, Montana Dir. of the Bureau of Land Management, et al., Civil No. 74-34-BLG, D. Mont. Dismissed for want of jurisdiction, September 4, 1974; dismissed, September 11, 1975.

Richard M. Lade, As Attorney in Fact for Santa Fe Pacific R. R., A-29121 (January 10, 1963)

Richard M. Lade, Attorney in Fact for Santa Fe Pacific R. R. v. Udall, et al., Civil No. 67-14, D. Ore. Judgment for defendant, 295 F. Supp. 265 (1968); aff'd., 432 F. 2d 254 (9th Cir. 1970); no petition.

Bureau of Land Management, Appellant, Diamond Ring Ranch, Appellee & Bureau of Sport Fisheries & Wildlife, Amicus Curiae, 12 IBLA 358 (1973)

Diamond Ring Ranch, Inc. v. Rogers C. B. Morton, Secretary of the Interior, & Daniel P. Baker, State Dir., Bureau of Land Management for the State of Wyoming, Civil No. 5934, D. Wyo. Judgment for plaintiff, December 20, 1974.

W. Dalton La Rue, Sr., 69 I.D. 120 (1962)

W. Dalton La Rue, Sr. v. Stewart L. Udall, Civil No. 2784-62. Judgment for defendant, March 6, 1963; aff'd., 324 F. 2d 428 (1963); cert. denied, 376 U.S. 907 (1964).

W. Dalton La Rue, Sr. & Juanita S. La Rue, d/b/a Winnemucca Ranch, Appellants, M. S. Land & Livestock Co., Intervenor, 9 IBLA 208 (1973)

W. Dalton La Rue, Sr. & Juanita S. La Rue v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. R-2827, D. Nev. Judgment for defendant, March 12, 1974; aff'd., March 2, 1976; rehearing denied, April 21, 1976; cert. denied, November 1, 1976.

Langdon H. Larwill, et al., A-28697 (May 16, 1963)

Pacific Oil Co., a Corp. v. Stewart L. Udall, Civil No. 9406, D. Colo. Judgment for defendant, 273 F. Supp. 203 (1967); aff'd.,

406 F. 2d 452 (10th Cir. 1969); cert. denied, 395 U.S. 978 (1969).

Donald J. Laughlin, d/b/a Riverside Resort & Casino, 25 IBLA 41 (1976) On Reconsideration, 26 IBLA 154 (1976)

Donald J. Laughlin v. Thomas S. Kleppe, individually & as Secretary of the Interior, Curt Berklund, individually & as Director, Bureau of Land Management, & H. M. Bruce, individually & as Yuma District Manager of the BLM, Civil No. 76-237 RDF, D. Nev. Suit pending.

River Queen Corp., an Arizona Corp., d/b/a River Queen Resort v. Thomas S. Kleppe, individually & as Secretary of Interior, et al., Civil No. CIV 76-873 PCT-WPC, D. Ariz. Suit pending.

L. B. Samford, Inc., 74 I.D. 86 (1967)

L. B. Samford, Inc. v. U.S., Ct. Cl. No. 393-67. Dismissed, 410 F. 2d 782 (1969); no petition.

Perley M. Lewis and Mildred C. Lewis, A-28707 (December 30, 1963)

Perley M. Lewis, et ux. v. Stewart L. Udall., et al., Civil No. 5451 Phx., D. Ariz. Judgment for defendant, March 22, 1966; aff'd., 374 F. 2d 180 (9th Cir. 1967); no petition.

Perley M. Lewis, A-29572 (June 27, 1963)

Perley M. Lewis & Mildred C. Lewis v. Stewart L. Udall, Secretary of the Interior, Civil No. 5003 Phx., D. Ariz. Judgment for defendant, July 31, 1967; amended judgment for defendant, May 28, 1968; aff'd., 427 F. 2d 673 (9th Cir. 1970); cert. denied, 400 U.S. 992 (1970).

Milton H. Lichtenwalner, A-28909 et al. (June 15, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 2932-62. Judgment for defendant, July 15, 1963; no appeal.

Milton H. Lichtenwalner, et al., 69 I.D. 71 (1962)

Kenneth McGahan v. Stewart L. Udall, Civil No. A-21-63, D. Alas. Dismissed on merits, April 24, 1964; stipulated dismissal of appeal with prejudice, October 5, 1964.

Charles Lewellen, 70 I.D. 475 (1963)

Bernard E. Darling v. Stewart L. Udall, Civil No. 474-64. Judgment for defendant, October 5, 1964; appeal voluntarily dismissed, March 26, 1965.

Linn Land Co., A-28765 (July 12, 1962)

Linn Land Co., et al., v. Stewart L. Udall, Civil No. 63-264, D. Ore. Consolidated with Forsberg v. Udall, Schmand v. Udall & Property Management Co. v. Udall, Battle Mt. Co. v. Udall. Judgment for defendant, 255 F. Supp. 382 (1966), except per curiam dec. as to Battle Mountain which see. Stipulated dismissal on appeal, October 13, 1966.

Merwin E. Liss, et al., 70 I.D. 228 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall, et al., Civil No. 2109-63. Judgment for defendant, September 20, 1965; per curiam dec., aff'd., April 28, 1966; no petition.

Leland M. Lucas, A-29228 (December 10, 1962)

Leland Murray Lucas v. Stewart L. Udall, et al., Civil No. 5007 Phx., D. Ariz. Stipulated dismissal, October 10, 1967.

Estate of Richard Lucero, IA-1435 (June 13, 1966)

Eunice Lucero Vaile v. Stewart L. Udall, Civil No. 6808, W. D. Wash. Judgment for defendant, May 12, 1967; summary judgment entered May 25, 1967; no appeal.

Estate of Richard Lucero, I IBIA 46 (1970)

Eunice Lucero Vaile v. Rogers C. B. Morton, et al., Civil No. 9585, D. Wash. Judgment for defendant, January 14, 1972; aff'd., February 26, 1974; no petition.

Bess May Lutey, 76 I.D. 37 (1969)

Bess May Lutey, et al. v. Dept. of Agriculture, BLM, et al., Civil No. 1817, D. Mont. Judgment for defendant, December 10, 1970; no appeal.

James W. McDade, 3 IBLA 226 (1971)

James W. McDade v. Rogers C. B. Morton, Civil No. 2437-71. Judgment for defendant, 353 F. Supp. 1006 (1973); Per curiam decision, aff'd., 494 F. 2d 1156 (D.C. Cir. 1974); no petition.

Sheridan L. McGarry, A-28759 (January 26, 1962)

Sheridan L. McGarry v. Stewart L. Udall, Civil No. 1262-62. Judgment for defendant, 216 F. Supp. 314 (1962); no petition.

Joseph MacIsaac, et al., 8 IBLA 51 (1972)

Joseph F. MacIsaac, Stanley P. Cornelius, Hillen L. Arnold, Henry E. Reeves, Starling P.

Cornelius, Richard Ransom v. Rogers C. B. Morton, Civil No. A-6-73, D. Alas. Dismissed with prejudice for want of prosecution by plaintiff, December 19, 1974.

Elgin A. McKenna Executrix, Estate of Patrick A. McKenna, 74 I.D. 133 (1967)

Mrs. Elgin A. McKenna as Executrix of the Estate of Patrick A. McKenna, Deceased v. Udall, Civil No. 2001-67. Judgment for defendant, February 14, 1968; aff'd., 418 F. 2d 1171 (1969); no petition.

Mrs. Elgin A. McKenna, Widow and Successor in Interest of Patrick A. McKenna, Deceased v. Walter J. Hickel, Secretary of the Interior, et al., Civil No. 2401, D. Ky. Dismissed with prejudice, May 11, 1970.

A. G. McKinnon, 62 I.D. 164 (1955)

A. G. McKinnon v. U.S., Civil No. 9433, D. Ore. Judgment for plaintiff, 178 F. Supp. 913 (1959); rev'd., 289 F. 2d 908 (9th Cir. 1961).

Estate of Alvina Beauvois McLean, IA-D-27 (February 14, 1969), IA-D-30 (July 24, 1969)

Kenneth Samuel McLean v. Walter J. Hickel, Secretary of the Interior, Civil No. 2721-69, D. C. Judgment for defendant, March 13, 1970; dismissed for lack of prosecution, April 9, 1971.

Estate of Elizabeth C. Jensen McMaster, 5 IBIA 61; 83 I.D. 145 (1976)

Raymond C. McMaster v. U.S., Dept. of the Interior, Secretary of the Interior & Bureau of Indian Affairs, Civil No. C76-129T, W.D. Wash. Suit pending.

Wade McNeil, et al., 64 I.D. 423 (1957)

Wade McNeil v. Fred A. Seaton, Civil No. 648-58. Judgment for defendant, June 5, 1959 (opinion); rev'd., 281 F. 2d 931 (1960); no petition.

Wade McNeil v. Albert K. Leonard, et al., Civil No. 2226, D. Mont. Dismissed, 199 F. Supp. 671 (1961); order, April 16, 1962.

Wade McNeil v. Stewart L. Udall, Civil No. 678-62. Judgment for defendant, December 13, 1963 (opinion); aff'd., 340 F. 2d 801 (1964); cert. denied, 381 U.S. 904 (1965).

Wade McNeil, A-30736 (April 20, 1967)

Wade McNeil v. Udall, Civil No. 2705, D. Mont. Judgment for defendant, February 6, 1969 (opinion); no appeal.

J. W. McTiernan, 11 IBLA 284 (1973)

J. W. McTiernan v. Marvin Franklin, Acting Secretary of the Interior, Civil No. 73-481-B, W.D. Okla. Dismissed, April 4, 1974; aff'd., January 7, 1975.

J. W. McTiernan, 14 IBLA 369 (1974)

J. W. McTiernan v. Rogers C. B. Morton, Secretary of the Interior, Civil No. FS-74-42-C, W.D. Ark. Judgment for defendant, February 4, 1977.

Marathon Oil Co., 81 I.D. 447 (1974), Atlantic Richfield Co., Marathon Oil Co., 81 I.D. 457 (1974)

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-179, D. Wyo.

Marathon Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-180, D. Wyo.

Atlantic Richfield Co. & Pasco, Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C 74-181, D. Wyo.

Actions consolidated; judgment for plaintiff, December 11, 1975; notice of appeal filed in Civil Nos. C 74-179 & 180, February 6, 1976.

Estate of Andrew Jackson Marsh, 4 IBIA 106 (1975)

Warren Dale Ling & Francis Miles Ling, commonly known as "Frank Ling" v. Kent Frizzell, Acting Secretary of the Interior, Civil No. C-75-200, E.D. Wash. Judgment for defendant, January 27, 1976.

Appeal of Roy L. Matchett, IBCA-826-2-70 (February 26, 1971)

Roy L. Matchett v. U.S., Ct. Cl. 40-72. Dismissed with prejudice, September 25, 1973.

Billy Mathis, et al., A-30512 (July 6, 1966)

Billy Mathis, et al. v. Stewart L. Udall, et al., Civil No. 6833, D. N.M. Dismissed with prejudice, January 6, 1967; rendered moot by P.L. 89-365.

Ralph E. May, A-29014 (January 30, 1962)

Ralph E. May v. Stewart L. Udall, Civil No. 1379-62. Dismissed with prejudice, March 22, 1963; no appeal.

Estate of Oliver Maynahonah, IA-1522 (No dec.), IA-T-1 (June 30, 1966)

Ruth Maynahonah Kadayso v. Stewart L. Udall, Civil No. 66-281, W.D. Okla. Dismissed with prejudice, February 8, 1967.

Allan E. Mecham, et al., A-30244 (December 23, 1964)

Allan E. Mecham, et al. v. Stewart L. Udall, et al., Civil No. C-22-65, D. Utah. Motion to dismiss granted, May 11, 1965; aff'd., 369 F. 2d 1 (10th Cir. 1966); no petition.

Salvatore Megna, Guardian, Philip T. Garigan, 65 I.D. 33 (1958)

Salvatore Megna, Guardian etc. v. Fred A. Seaton, Civil No. 468-58. Judgment for plaintiff, November 16, 1959; motion for reconsideration denied, December 2, 1959; no appeal.

Philip T. Garigan v. Stewart L. Udall, Civil No. 1577 Tux., D. Ariz. Preliminary injunction against defendant, July 27, 1966; supplemental dec. rendered September 7, 1966; judgment for plaintiff, May 16, 1967; no appeal.

Meva Corp., 76 I.D. 205 (1969)

Meva Corp. v. U.S., Ct. Cl. No. 492-69. Judgment for plaintiff, 511 F. 2d 548 (1975).

Albert P. Mickunas, 12 IBLA 275 (1973)

Albert P. Mickunas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-1820 WPG, C.D. Cal. Dismissed with prejudice, September 30, 1974; dismissed, May 14, 1976; petition for rehearing denied, June 3, 1976.

Donald E. Miller, 2 IBLA 309 (1971), 15 IBLA 95 (1974)

Donald E. Miller v. Walter J. Hickel, et al., Civil No. C-70-2328, D. Cal. Remanded to the Department for further proceedings, July 5, 1973; dismissed with prejudice, February 6, 1975.

Duncan Miller, A-27620 (July 28, 1958)

Duncan Miller v. Fred A. Seaton, Civil No. 346-60. Judgment for defendant, February 23, 1961; aff'd., 307 F. 2d 676 (1962); cert. denied, 371 U.S. 967 (1963); rehearing denied, 372 U.S. 950 (1963).

Duncan Miller, Louise Cuccia, 66 I.D. 388 (1959)

Louise Cuccia & Shell Oil Co. v. Stewart L. Udall, Civil No. 562-60. Judgment for defendant, June 27, 1961; no appeal.

Duncan Miller, A-28008 (August 10, 1959), A-28093 et al. (October 30, 1959), A-28133 (December 22, 1959), A-28378 (August 5, 1960), A-28258 et al. (February 10, 1960).

Duncan Miller v. Stewart L. Udall, Civil No. 3470-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Duncan Miller, A-28057 (October 16, 1959), A-28398 (August 31, 1960), A-28359 (July 18, 1960), A-28433 (August 30, 1960), A-28293, A-28436 (June 7, 1960), A-27897, A-27914, A-27923, A-27930, A-28003, A-28014 (March 31, 1959), A-27810 (January 16, 1959).

Duncan Miller v. Stewart L. Udall, Civil No. 3931-60. Judgment for defendant, April 4, 1963; aff'd., per curiam dec., February 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, August 13, 1964; aff'd., January 12, 1965; no petition.

Duncan Miller, A-28528 et al. (February 10, 1960)

Betty J. Lewis v. Stewart L. Udall, Civil No. 3904-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Duncan Miller, A-28509 (October 20, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 187-61. Judgment for defendant, May 24, 1963; no appeal.

Duncan Miller, A-28172 (February 11, 1960), A-28267 (June 8, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 3932-60. Judgment for defendant, May 22, 1963; aff'd., February 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, August 13, 1964; aff'd., January 12, 1965; no petition.

Duncan Miller, A-28586, A-28633, A-28671, A-28686 (January 25, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 1268-61. Judgment for defendant, September 28, 1962; appeal dismissed (1963).

Duncan Miller, A-28647 (July 20, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 3409-61. Judgment for defendant, May 21, 1963; no appeal.

Duncan Miller, A-29312 (January 29, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1381-62. Judgment for

defendant, November 21, 1962 (opinion); appeal dismissed April 12, 1963.

Duncan Miller, A-28937 (September 25, 1962), A-29041 (November 7, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 4003-62. Dismissed for want of prosecution, May, 1966.

Duncan Miller, A-29365 (July 1, 1963), A-29521 (August 29, 1963), & A-29633 (September 5, 1963).

Duncan Miller v. Stewart L. Udall, Civil No. 2413-63. Dismissed, October 2, 1967; no appeal.

Duncan Miller, 70 I.D. 1 (1963)

Duncan Miller v. Stewart L. Udall, Civil No. 931-63. Dismissed for lack of prosecution, April 21, 1966; no appeal.

Duncan Miller, Samuel W. McIntosh, 71 I.D. 121 (1964)

Samuel W. McIntosh v. Stewart L. Udall, Civil No. 1522-64. Judgment for defendant, June 29, 1965; no appeal.

Duncan Miller, A-29900 (March 5, 1964), A-30067 (March 12, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 689-64. Dismissed for failure to prosecute, July 6, 1966.

Duncan Miller, A-30213 (April 8, 1964), A-30192 (April 9, 1964), A-30212 (July 13, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 1829-64. Judgment for defendant, September 28, 1965; no appeal.

Duncan Miller, A-30122 (September 23, 1964), A-30451 (November 17, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2543-64. Motion to amend granted, February 15, 1966; dismissed, April 3, 1969; no appeal.

Duncan Miller, A-30270 (May 5, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. C-153-65, D. Utah. Judgment for defendant, November 15, 1965; aff'd., 368 F. 2d 548 (10th Cir. 1966); no petition.

Duncan Miller, A-30434 (June 8, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 9477, N.D. Cal. Judgment for defendant, June 27, 1966; no appeal.

Duncan Miller, A-30393 (June 30, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2384-65. Judgment for defendant, October 12, 1966; dismissed May 22, 1967; supp. complaint dismissed June 12, 1967; appeal dismissed April 12, 1968; petition for mandamus denied, October 14, 1968.

Duncan Miller, A-30517 (April 28, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. 5047, D. Wyo. Judgment for defendant, August 11, 1966; appeal dismissed, September 14, 1967.

Duncan Miller, A-30570 (August 3, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. A-139-66, D. Alas. Judgment for defendant, March 13, 1967; motion for reconsideration denied, September 19, 1967; no appeal.

Duncan Miller, A-30546 (August 10, 1966), A-30566 (August 11, 1966), & 73 I.D. 211 (1966)

Duncan Miller v. Udall, Civil No. C-167-66, D. Utah. Dismissed with prejudice, April 17, 1967; no appeal.

Duncan Miller, A-29231 (February 5, 1963) See Lucille S. West, Duncan Miller, et al.

Duncan Miller, A-30669 (November 8, 1966)

Duncan Miller v. Director of the Bureau of Land Management, Civil No. 779, D. Mont. Judgment for defendant, April 25, 1969; no appeal.

Duncan Miller, A-30628 (November 16, 1966), A-30684 (January 19, 1967), A-30708 (November 16, 1966), A-30797 (September 12, 1967)

Duncan Miller v. Secretary of the Interior & his officers, Civil No. 7334, D. N.M. Dismissed with prejudice, August 28, 1968; motion to set aside judgment denied, September 24, 1968; motion for reconsideration denied, November 4, 1968.

Duncan Miller, A-30891 (March 5, 1968)

Duncan Miller v. Udall, Civil No. 745-68. Dismissed with prejudice, October 14, 1968; no appeal.

Duncan Miller, A-30924 (November 13, 1968), A-30934 (November 22, 1968), A-30966 (October 29, 1968), A-31054 (August 21, 1969)

Duncan Miller v. Secretary of the Interior, Civil No. 52-69. Amended complaint dismissed without prejudice, July 20, 1970; motion to reinstate case denied, January 6, 1972; motion for reconsideration denied, February 7, 1972.

Duncan Miller, A-31087 (February 4, 1970), A-31095 (February 2, 1970), A-31148 (March 2, 1970), A-31159 (March 2, 1970)

Duncan Miller v. Officers of the BLM & Dept. of the Interior, Civil No. 1393-70. Dismissed for failure to prosecute, January 4, 1971; no appeal.

Duncan Miller, 4 IBLA 274 (1972)

Duncan Miller v. Adjudicative Officers of the U.S. Geological Survey, Tulsa, Okla., & the Adjudicative Officers of the Bureau of Land Management, Civil No. 73-C-96, N.D. Okla. Dismissed with prejudice, November 2, 1973; motion for rehearing denied, November 14, 1973; appeal dismissed, February 8, 1974.

Duncan Miller, 6 IBLA 283 (1972), 6 IBLA 507 (1972), 7 IBLA 343 (1972)

Duncan Miller v. Adjudicative Officers of the Bureau of Land Management, Dept. of the Interior, Civil No. 1757-72. Judgment for defendant, February 7, 1973; motion to set aside judgment denied, March 5, 1973.

Duncan Miller, 7 IBLA 343 (1972), 16 IBLA 24 (1974), 16 IBLA 71 (1974), 16 IBLA 379 (1974)

Duncan Miller v. Bureau of Land Management, Department of the Interior, Secretary of the Interior, Civil No. 74-1488. Dismissed, December 4, 1974.

Duncan Miller v. Adjudicative Officers of the Billings Bureau of Land Management, Civil No. 74-53-BLG, D. Mont. Dismissed, October 31, 1974; motion to amend complaint denied, December 18, 1974.

Duncan Miller v. Adjudicate Officers of the Billings Bureau of Land Management, Civil No. 1146, D. Mont. Dismissed, June 29, 1973; appeal not pursued by plaintiff.

Duncan Miller v. Officers of the Department of the Interior, Civil No. 76-48 BLG, D. Mont. Suit pending.

Duncan Miller, 10 IBLA 27 (1973)

Duncan Miller v. Administrative Officers of the Bureau of Land Management & Dept. of the Interior, Civil No. 1035-73. Dismissed, October 30, 1973; motions for reconsideration denied respectively, December 4, 1973, January 4, 1974, & April 5, 1974; appeal dismissed, August 27, 1975; motion for rehearing denied, August 27, 1975; motion for reconsideration denied, November 6, 1975; application for extension of time to file writ of certorari filed; no petition.

Duncan Miller, 12 IBLA 199, 201, 206 (1973), 73 IBLA 319, 406, 407, 410, 411, 412, 74 IBLA 12, 16 (Order of dismissal dated July 17, 1973)

Duncan Miller v. The Board of Land Appeals, Department of the Interior, Civil No. 1929-73. Dismissed, February 15, 1974; appeal dismissed, August 27, 1975; motion for rehearing denied, August 27, 1975; motion for reconsideration denied, November 6, 1975; application for extension of time to file writ of certorari filed; no petition.

Duncan Miller, 12 IBLA 201 (1973), 12 IBLA 206 (1973)

Duncan Miller v. Admin. Officers, California Bureau of Land Management, Civil No. S-2471, D. Cal. Dismissed, June 25, 1973; motion for rehearing filed June 29, 1973.

Duncan Miller, 15 IBLA 275 (1974), Order, May 13, 1974

Duncan Miller v. Operating Officers of the Bureau of Land Management, The Department of the Interior, & The Hon. Secretary of the Interior (Nominal Defendant), Civil No. 74-1116. Dismissed, October 22, 1974; no appeal.

Duncan Miller, 19 IBLA 133 (1975), 19 IBLA 188 (1975), 20 IBLA 1 (1975), 20 IBLA 9 (1975), 20 IBLA 19 (1975), IBLA 75-379 (dismissed by order, March 20, 1975), IBLA 75-365 (dismissed by order, March 24, 1975).

Duncan Miller v. The Honorable Secretaries of the Interior, etc., et al., Civil No. 75-0905. Complaint dismissed, August 8, 1975; reconsideration denied, September 16, 1975.

Duncan Miller, 19 IBLA 133 (1975), 19 IBLA 188 (1975), 20 IBLA 1 (1975), 20 IBLA 9 (1975), 20 IBLA 19 (1975), 21 IBLA 50 (1975), 22 IBLA 52 (1975), IBLA 75-379 (dismissed by order, March 20, 1975), IBLA 75-365 (dismissed by order, March 24, 1975), IBLA 75-251, 75-289, 75-326, 75-327, 75-382, 75-426 (dismissed by orders, April 30, 1975), IBLA 75-278 (dismissed by order, May 22, 1975).
See also Evelyn R. Robertson.

Duncan Miller v. The Honorable Secretaries of the Interior, etc., et al., Civil No. 75-2138. Dismissed; appeal dismissed.

John R. Mimick, et al., 25 IBLA 107 (1976)

John R. Mimick, James W. Belmont, Thomas J. Lauvetz & Arthur J. Denney v. Thomas Kleppe, Individually & in his capacity as Secretary of the Interior, Civil No. 76-0-240, D. Neb. Dismissed without prejudice, December 21, 1976.

H. D. Mollohan & Eagle Tail Ranch, A-29335 (July 8, 1963)

H. D. Mollohan, et al. v. Warren J. Gray, et al., Civil No. 4877

Phx., D. Ariz. Judgment for defendant, November 13, 1967; aff'd., 413 F. 2d 349 (9th Cir. 1969); no petition.

Howard S. Mollring, A-29498 (July 26, 1963)

Howard S. Mollring v. J. E. Keough, et al., Civil No. C-200-63, D. Utah. Judgment for defendant, January 8, 1964; no appeal.

Monturah Co., 10 IBLA 347 (1973)

Charles S. Pashayan, Lillie A. Pashayan, Charles S. Pashayan, Jr., & Suzanne Lillie Pashayan, Co-partners, d/b/a Monturah Co. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-1083, (9th Cir.). Dismissed for lack of jurisdiction, April 24, 1974; Civil No. F-74-5-Civ, E.D. Cal. Dismissed without prejudice, April 11, 1974.

Bobby Lee Moore, et al., 72 I.D. 505 (1965)
Anquita L. Kluenter, et al., A-30483 (November 18, 1965)

Gary Carson Lewis, etc., et al. v. General Services Administration, et al., Civil No. 3253, S.D. Cal. Judgment for defendant, April 12, 1965; aff'd., 377 F. 2d 499 (9th Cir. 1967); no petition.

Henry S. Morgan, et al., 65 I.D. 369 (1958)

Henry S. Morgan v. Stewart L. Udall, Civil No. 3248-59. Judgment for defendant, February 20, 1961 (opinion); aff'd., 306 F. 2d 799 (1962); cert. denied, 371 U.S. 941 (1962).

Morrison-Knudsen Co., 64 I.D. 185 (1957)

Morrison-Knudsen Co. v. U.S., Ct. Cl. No. 239-61. Remanded to Trial Comm'r., 345 F. 2d 833 (1965); Commr's. report adverse to U.S. issued June 20, 1967; judgment for plaintiff, 397 F. 2d 826 (1968); part remanded to the Board of Contract Appeals; stipulated dismissal on October 6, 1969; judgment for plaintiff, February 17, 1970.

Glenn Munsey, Earnest Scott, & Arnold Scott v. Smitty Baker Coal Co., 1 IBMA 208 (1972)

Glenn Munsey, Arnold Scott, & Earnest Scott, Miners v. Rogers C. B. Morton, Secretary of the Interior, et al., No. 72-2095, United States Court of Appeals for the District of Columbia Circuit. Suit pending.

Navajo Tribe of Indians v. State of Utah, 80 I.D. 441 (1973)

Navajo Tribe of Indians v. Rogers C. B. Morton, Secretary of the Interior, Joan B. Thompson, Martin Ritvo, & Frederick Fishman, members of the Board of Land Appeals, Dept. of the Interior, Civil No. C-308-73, D. Utah. Suit pending.

New York State Natural Gas Corp., A-28687 (July 19, 1962)

Jacob N. Wasserman v. Stewart L. Udall, Civil No. 3207-62. Judgment for defendant, 234 F. Supp. 651 (1964); no appeal.

Jess H. Nicholas, Jr., A-30065 (October 13, 1964)

Jess H. Nicholas, Jr. v. Stewart L. Udall, Civil No. A-67-64, D. Alas. Judgment for defendant, September 17, 1965; aff'd., 385 F. 2d 177 (9th Cir. 1967); no petition.

Robert D. Nininger, Appellant, Paul C. Kohlman, Appellee, 16 IBLA 200 (1974)

Robert D. Nininger v. Rogers C. B. Morton & Kenneth J. Sire, Civil No. 74-1246. Defendant's motion for summary judgment granted, March 20, 1975; no appeal.

Leonard E. Noren, A-27583 (September 13, 1960)

Leonard E. Noren v. Walter E. Beck, Civil No. 2139 ND, S.D. Cal. Judgment for defendant, 199 F. Supp. 708 (1961).

Leonard E. Noren v. Walter E. Beck, Civil No. 2347 ND, S.D. Cal. Judgment for plaintiff, September 17, 1965; rev'd. & remanded sub nom. Robert E. McCarthy, successor to Walter E. Beck v. Leonard E. Noren, et al., rev'd. & remanded, 370 F. 2d 845 (9th Cir. 1966); cert. denied, 387 U.S. 917 (1967).

Appeal of North Star Aviation Corp., IBCA-741 (May 19, 1969)

North Star Aviation Corp. v. U.S., Ct. Cl. No. 264-69. Commr's. report adverse to U.S. issued December 10, 1971; judgment for plaintiff, 458 F. 2d 64 (1972).

Richard L. Oelschlaeger, 67 I.D. 237 (1960)

Richard L. Oelschlaeger v. Stewart L. Udall, Civil No. 4181-60. Dismissed, November 15, 1963; case reinstated, February 19, 1964; remanded, April 4, 1967; rev'd. & remanded with directions to enter judgment for appellant, 389 F. 2d 974 (1968); cert. denied, 392 U.S. 909 (1968).

Oil and Gas Leasing on Lands Withdrawn By Executive Orders for Indian Purposes in Alaska, 70 I.D. 166 (1963)

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. 760-63, D. Alas. Withdrawn April 18, 1963.

Superior Oil Co. v. Robert L. Bennett, Civil No. A-17-63, D. Alas. Dismissed, April 23, 1963.

Native Village of Tyonek v. Robert L. Bennett, Civil No. A-15-63, D. Alas. Dismissed, October 11, 1963.

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. A-20-63, D. Alas. Dismissed, October 29, 1963 (oral opinion); aff'd., 332 F. 2d 62 (9th Cir. 1964); no petition.

George L. Gucker v. Stewart L. Udall, Civil No. A-39-63, D. Alas. Dismissed without prejudice, March 2, 1964; no appeal.

Estate of Rose Old Bear Wilson, 4 IBIA 62, (1975)

James Harold Kindness & Sherman Grant Wilson, Jr. v. Kent Frizzell, Acting Secretary, Department of the Interior, Civil No. 75-76-Blg, D. Mont. Judgment for defendant, April 9, 1976.

Old Ben Coal Co., 81 I.D. 428, 81 I.D. 436, 81 I.D. 440 (1974)

Old Ben Coal Corp. v. Interior Board of Mine Operations Appeal,

Old Ben Coal Co., 81 I.D. 428, 81 I.D. 436, 81 I.D. 440 (1974)

Old Ben Coal Corp. v. Interior Board of Mine Operations Appeals, et al., Nos. 74-1654, 74-1655, 74-1656, United States Court of Appeals for the 7th Cir. Board's decision aff'd., June 13, 1975; reconsideration denied, June 27, 1975.

Old Ben Coal Co., 82 I.D. 355 (1975)

United Mine Workers of America v. U.S. Interior Board of Mine Operations Appeals, No. 75-1852, United States Court of Appeals, D.C. Circuit. Suit pending.

Susie Ondola, 17 IBLA 359 (1974)
See Virginia Gail Atchison

George Ondola, 17 IBLA 363 (1974)
See Virginia Gail Atchison

Joseph I. O'Neill, Jr., A-30488 (April 19, 1966), A-30488 (Supp.) (December 7, 1966)

Joseph I. O'Neill, Jr. v. Stewart L. Udall, Civil No. 3556-SD-K, S.D. Cal. Remanded to the Dept. for clarification of Departmental decision, August 12, 1966; order denying defendant's motion for summary judgment, without prejudice & remanding case for clarification of the affirmance of the Departmental decision, March 8, 1967; no appeal; stipulated dismissal, November 22, 1971.

Appeal of Ounalashka Corp., 1 ANCAB 104; 83 I.D. 475 (1976)

Ounalashka Corp., for & on behalf of its Shareholders v. Thomas Kleppe, Secretary of Interior, & his successors & predecessors in office, et al., Civil No. A76-241 CIV, D. Alas. Suit pending.

Oyate Inc., et al., IA-2629 (Still pending)

Oyate, Inc. a non profit South Dakota Corp., et al. v. Rogers C. B. Morton, Civil No. 687-73. Dismissed, January 7, 1974.

Eugene C. Paine, et al., A-27632 (August 21, 1958)

Eugene C. Paine, et al. v. Stewart L. Udall, Civil No. 2607-58. Judgment for plaintiff, September 24, 1959; vacated & remanded, Wright v. Seaton, Misc. 1403, January 11, 1960. Judgment for plaintiff, May 4, 1960; rev'd. & remanded, February 23, 1961; judgment for defendant, March 20, 1961; no petition.

Irene Mitchell Pallin, A-28766 (September 21, 1962)

Irene Mitchell Pallin v. U.S. & Edward Elmer Mitchell, Jr., Civil No. 47552, N.D. Cal. Judgment for plaintiff, December 16, 1970; rev'd., 496 F. 2d 27 (9th Cir. 1974); no petition.

Pan American Petroleum Corp., IA-840 (December 18, 1959)

Pan American Petroleum Corp. v. Stewart L. Udall, Civil No. 960-60. Judgment for plaintiff, 192 F. Supp. 626 (1961); subsequent administrative appeal & supplemental complaint filed; judgment for plaintiff, February 16, 1966; no appeal.

Paul Jarvis, Inc., 64 I.D. 285 (1957)

Paul Jarvis, Inc. v. U.S., Ct. Cl. No. 40-58. Stipulated judgment for plaintiff, December 19, 1958.

Perry & Wallis, Inc., IBCA-617 (July 16, 1968)

Perry & Wallis, Inc. v. U.S., Ct. Cl. 365-68. Judgment for defendant, 427 F. 2d 722 (1970).

Peter Kiewit Sons' Co., 72 I.D. 415 (1965)

Peter Kiewit Sons' Co. v. U.S., Ct. Cl. 129-66. Judgment for plaintiff, May 24, 1968.

Estate of Pete-Goh-Deh-Dil (Joe Pete), IA-1322 (June 7, 1966)

Don & Winona James v. Mabel George Gomez, et al., Civil No. S-66-104,

E.D. Cal. Dismissed with prejudice as to defendants Udall, Crow & Hall, May 22, 1969; dismissed with prejudice as to defendant Gomez, September 1, 1970.

Curtis D. Peters, 80 I.D. 595 (1973)

Curtis D. Peters v. U.S., Rogers C. B. Morton, as Secretary of the Interior, Civil No. C-75-0201 RFP, N.D. Cal. Judgment for defendant, December 1, 1975; no appeal.

M. Blaine Peterson, A-28111 (November 23, 1959)

L. Robert Anderson v. Stewart L. Udall, Civil No. 3953-60. Dismissed without prejudice, November 13, 1961; no appeal.

Petroleum Ownership Map Co., IBCA-110 (May 29, 1958)

Petroleum Ownership Map Co. v. U.S., Ct. Cl. 269-62. Judgment for plaintiffs, 389 F. 2d 793 (1968).

City of Phoenix v. Alvin B. Reeves, et al., 81 I.D. 65 (1974)

Alvin B. Reeves, Genevieve C. Rippey, Leroy Reeves & Thelma Reeves, as heirs of A. H. Reeves, Deceased v. Rogers C. B. Morton, Secretary of the Interior & The City of Phoenix, a municipal Corp., Civil No. 74-117 PHX-WPC, D. Ariz. Dismissed with prejudice, August 9, 1974; reconsideration denied, September 24, 1974; no appeal.

Harold Ladd Pierce, 69 I.D. 14 (1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1351-62. Judgment for defendant, August 2, 1962; aff'd., 317 F. 2d 573 (1963); no petition.

Platte Valley Construction Co., IBCA-168 (August 28, 1958)

George Stanek, et al. v. U.S., Ct. Cl. 189-62. Compromised.

John M. Pomeroy, A-28134 (January 13, 1960)

John M. Pomeroy v. Walter E. Beck, Civil No. 8033, N.D. Cal. Dismissed by plaintiff, August 15, 1961; no appeal.

Port Blakely Mill Co., 71 I.D. 217 (1964)

Port Blakely Mill Co. v. U.S., Civil No. 6205, W.D. Wash. Dismissed with prejudice, December 7, 1964.

L. O. Power, et al., 22 IBLA 15 (1975)

L. O. Power, Ellis J. & Lois Dover, & Noble Ribelin v. U.S. & Kent Frizzell, Acting Secretary of the Interior, Civil No. CIV 75-708 PHX WPC, D. Ariz. Suit pending.

Property Management Co., A-29144 (August 19, 1963)

Property Management Co. v. Stewart L. Udall, Civil No. 64-28, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, October 13, 1966. See Linn Land Co. v. Udall.

Nola Grace Ptasynski, Barbara C. Lisco, 19 IBLA 125 (1975), 26 IBLA 340 (1976) (Supp.)

Barbara C. Lisco v. The Honorable Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-281, D. N.M. Remanded to the Department, March 3, 1976.

Nola Grace Ptasynski v. The Honorable Stanley K. Hathaway, Secretary of the Interior, et al., Civil No. 75-282, D. N.M. Remanded to the Department, April 6, 1976.

R. E. Puckett, A-30419 (October 29, 1965)

Robert E. Puckett v. Stewart L. Udall, Secretary of the Interior, Civil No. 2786-65. Dismissed without prejudice, August 15, 1966.

Ethel C. Radzewicz, et al., A-30866 (January 29, 1968)

Georgette B. Lee (Hall) v. Udall, Civil No. 985-68. Judgment for defendant, October 30, 1969; dismissed, November 17, 1970.

Estate of John S. Ramsey (Wap Tose Note) (Nez Perce Allottee No. 853, Deceased), 81 I.D. 298 (1974)

Clara Ramsey Scott v. U.S. & Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 3-74-39, D. Idaho. Dismissed with prejudice, August 11, 1975; no appeal.

Ray D. Bolander Co., 72 I.D. 449 (1965)

Ray D. Bolander Co. v. U.S., Ct. Cl. 51-66. Judgment for plaintiff, December 13, 1968; subsequent Contract Officer's dec., December 3, 1969; interim dec., December 2, 1969; Order to Stay Proceedings

until March 31, 1970; dismissed with prejudice, August 3, 1970.

Estate of Elgin Red Elk, IA-1230 (November 13, 1964)

Bert Taunah, et al. v. Stewart Udall, Civil No. 65-82, W.D. Okla. Judgment for plaintiff, April 27, 1967; rev'd. & remanded, 398 F. 2d 795 (10th Cir. 1968); no petition.

Estate of Crawford J. Reed (Unallotted Crow No. 6412), 1 IBIA 326; 79 I.D. 621 (1972)

George Reed, Sr. v. Rogers Morton, et al., Civil No. 1105, D. Mont. Dismissed, June 14, 1973; no appeal.

Reliable Coal Corp., 1 IBMA 97; 79 I.D. 139 (1972)

Reliable Coal Corp. v. Rogers C. B. Morton, Secretary of the Interior, et al., No. 72-1417, United States Court of Appeals, 4th Cir. Suit pending.

R. G. Brown, Jr. & Co., IBCA-356 (July 26, 1963)

Robert G. Brown, Jr., et al. v. U.S., Ct. Cl. No. 373-63. Judgment for plaintiff, April 6, 1965; no appeal.

Richfield Oil Corp., 62 I.D. 269 (1955)

Richfield Oil Corp. v. Fred A. Seaton, Civil No. 3820-55. Dismissed without prejudice, March 6, 1958; no appeal.

Mark B. Ringstad, et al., Inlet Oil Corp., et al., Robert L. Lawler, et al., A-31111, A-31115, A-31134, A-31118 (March 17, 1970)

Robert Lawler, et al. v. Walter J. Hickel, Civil No. F-14-70, D. Alas.

Inlet Oil Corp. & Raymond J. Ellis v. Walter J. Hickel, Civil No. A-48-70, D. Alas. Stipulated dismissal without prejudice, August 11, 1970.

Actions consolidated, June 26, 1970. Judgment for defendant, February 22, 1972; no appeal.

Hugh S. Ritter, Thomas M. Bunn, 72 I.D. 111 (1965), Reconsideration denied by letter decision dated June 23, 1967, by the Under Secretary.

Thomas M. Bunn v. Stewart L. Udall, Civil No. 2615-65. Remanded, June 28, 1966.

Estate of William Cecil Robedeaux, 1 IBIA 106, 78 I.D. 234 (1971), IBIA 71-5 (Supp. 1) (August 16, 1974), 80 I.D. 390 (1973)

Oneta Lamb Robedeaux, et al. v. Rogers C. B. Morton, Civil No. 71-646, D. Okla. Dismissed, January 11, 1973.

Houston Bus Hill v. Rogers C. B. Morton, Civil No. 72-376, W.D. Okla. Judgment for plaintiff, October 29, 1973; amended judgment for plaintiff, November 12, 1973; appeal dismissed, June 28, 1974.

Houston Bus Hill & Thurman S. Hurst v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-528-B, W.D. Okla. Judgment for plaintiff, April 30, 1975; corrected judgment, May 2, 1975; per curiam dec., vacated & remanded, October 2, 1975; judgment for plaintiff, December 1, 1975.

Evelyn R. Robertson, et al., Duncan Miller, A-29251 (March 21 1963), (see Duncan Miller, 20 IBLA 1 (1975))

Duncan Miller v. Stewart L. Udall, Civil No. 1066-63. Judgment for defendant, March 13, 1964; aff'd., 349 F. 2d 193 (1965); cert. denied, 385 U.S. 929 (1966); rehearing denied, 385 U.S. 1021 (1966).

W. C. Wells v. Stewart L. Udall, Civil No. A-37-63, D. Alas. Dismissed with prejudice, September 7, 1965; no appeal.

Evelyn R. Robertson v. Stewart L. Udall, Civil No. 1561-63. Judgment for defendant, April 4, 1964; aff'd., 349 F. 2d 195 (1965); no petition.

Richard W. Rowe, Daniel Gaudiane, 82 I.D. 174 (1975)

Richard W. Rowe, Daniel Gaudiane v. Stanley K. Hathaway, in his official capacity as Secretary of the Interior, Civil No. 75-1152. Judgment for defendant, July 29, 1976.

Edgar Rundle, A-29593 (August 2, 1963)

Edgar Rundle v. Stewart L. Udall, Civil No. 191-65. Judgment for defendant, September 22, 1965; aff'd., 379 F. 2d 112 (1967); cert. denied, 389 U.S. 845 (1967).

Estate of James Running Horse, IA-1048 (May 26, 1960)

Mary Hit Him Running Horse v. Stewart L. Udall, Civil No. 2106-68. Judgment for plaintiff, 211 F. Supp. 586 (1962); no appeal.

Louise Safarik, A-28307 et al. (April 22, 1960)

John J. King v. Stewart L. Udall, Civil No. 3903-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Louise Safarik, et al., A-28562 et al. (January 26, 1961)

Louise Safarik v. Stewart L. Udall, Civil No. 1081-61. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Samuel Gary v. Stewart L. Udall, Civil No. 1202-61. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Rune E. S. Safve, 13 IBLA 212 (1973)

Rune E. S. Safve v. Secretary of the Interior, Interior Board of Land Appeals, Dir., Bureau of Land Management, State Dir., Alaska, Bureau of Land Mgmt., Civil No. A-173-73 CIV, D. Alas. Dismissed, March 4, 1975; reinstated by court order, April 9, 1975; remanded to Bureau of Land Management for proceedings, March 19, 1976.

Louis Samuel, et al., 8 IBLA 268 (1972)

Charles M. Goad v. U.S. & Rogers Morton, Secretary of the Interior, Civil No. 9948, D. N.M. Dismissed with prejudice, January 16, 1974.

Joseph & Jean Maisano v. Rogers C. B. Morton, Secretary of the Interior, Bureau of Land Mgmt., & Board of Land Appeals, Civil No. 39720, E.D. Mich. Dismissed, October 12, 1973 (opinion); no appeal.

Gordon W. & Alleyne J. Laatz v. Rogers C. B. Morton, et al., Civil No. 03266, E.D. Mich. Dismissed, February 20, 1975 (opinion).

Louis Samuel v. Rogers C. B. Morton, Secretary of the Interior, Civil No. CV-74-1112-EC, C.D. Cal. Dismissed with prejudice, August 26, 1974; no appeal.

San Carlos Mineral Strip, 69 I.D. 195 (1962)

James Houston Bowman v. Stewart L. Udall, Civil No. 105-63. Judgment for defendant, 243 F. Supp. 672 (1965); aff'd., sub nom. S. Jack Hinton, et al. v. Stewart L. Udall, 364 F. 2d 676 (1966); cert. denied, 385 U.S. 878 (1966); supplemented by M-36767, November 1, 1967.

B. F. Sandoval, Jr., A-29975 (June 12 1964)

B. F. Sandoval, Jr. v. Stewart L. Udall, Civil No. 5779, D. N.M. Judgment for plaintiff, May 11, 1965; appeal dismissed January 12, 1966; order vacating prior judgment issued January 28, 1966.

Santa Fe Sand & Gravel Co., A-30657 (April 25, 1967)

Santa Fe Sand & Gravel Co. v. Boyd L. Rasmussen, et al., Civil No. 7135, D. N.M. Summary judgment for defendant, May 28, 1968; no appeal.

Kenneth F. Santor, 13 IBLA 208 (1973)

Kenneth F. Santor v. Rogers C. B. Morton, individually & as Secretary of the Interior, Daniel P. Baker, individually & as Dir. for the State of Wyo., Bureau of Land Mgmt., & Glenna M. Lane, individually & as Chief, O&G Section, Land Ofc., Wyo., Civil No. 5949, D. Wyo. Dismissed, November 15, 1974 (opinion); no appeal.

John W. Savage, 6 IBLA 253 (1972)

Amerada Hess Corp., Louisiana Land & Exploration Co., & Oil Shale Corp. v. Rogers C. B. Morton, Civil No. C-4361, D. Colo. Order holding matter in abeyance until 60 days after all appeals are completed in Oil Shale Corp., Supra., filed June 3, 1974.

Casper Joseph Schmand, Attorney in fact for Mike Swab, A-29451 (August 19, 1963)

Casper Joseph Schmand v. Stewart L. Udall, Civil No. 63-484, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, October 13, 1966. See Linn Land Co. v. Udall.

Ann D. Schmidt, A-28349 (July 28, 1960)

Ann D. Schmidt v. Stewart L. Udall, Civil No. 3912-60. Judgment for defendant, April 11, 1961; no appeal.

Betty Mae Schober & John L. Richardson, A-29430 (January 8, 1964). Reconsideration denied, March 6, 1964.

John L. Richardson v. Stewart L. Udall, Civil No. 3975, D. Idaho. Remanded, 253 F. Supp. 72 (1966); no appeal.

Charles Schraier, Robert Schulein, et al., A-30814, A-30816 (November 21, 1967)

Charles Schraier v. Stewart L. Udall, Secretary of the Interior, Civil No. 427-68. Judgment for defendant, October 31, 1968;

aff'd., 419 F. 2d 663 (1969); petition for rehearing en banc denied, October 8, 1969; no petition.

Joseph M. Schuck, A-28603 (August 16, 1961)

Joseph M. Schuck v. Secretary of the Interior, No. 16,682. Petition for review dismissed, December 15, 1961; no appeal.

Joseph M. Schuck v. Secretary of the Interior, Civil No. 1402 Tuc., D. Ariz. Complaint dismissed, January 30, 1962; no appeal.

Joseph M. Schuck v. Roy T. Helmandollar, Civil No. 1402 Tuc., D. Ariz. Judgment for defendant, March 19, 1962; no appeal.

Seal and Co., 68 I.D. 94 (1961)

Seal & Co. v. U.S., Ct. Cl. 274-62. Judgment for plaintiff, January 31, 1964; no appeal.

Administrative Appeal of Sessions, Inc. (A Cal. Corp.) v. Vyola Olinger Ortner (Lessor), Lease No. PSL-33, Joseph Patrick Patencio (Lessor), Lease No. PSL-36, Larry Olinger (Lessor), Lease No. PSL-41, 81 I.D. 651 (1974)

Sessions Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3589 LTL, C.D. Cal. Dismissed with prejudice, January 26, 1976.

Sessions Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3591 MML, C.D. Cal. Dismissed with prejudice, January 26, 1976.

Sessions Inc. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. CV 74-3590 FW, C.D. Cal. Dismissed with prejudice, January 26, 1976.

John J. Sexton, 15 IBLA 69 (1974), 20 IBLA 187 (on reconsideration)

John J. Sexton v. U.S., Rogers C. B. Morton as the Secretary of the Interior, et al., Civil No. F-74-6, D. Alas. Suit pending.

William D. Sexton, et al., 9 IBLA 316 (1973)
See William D. Sexton, et al.

William D. Sexton, et al., 9 IBLA 316 (1973), R. C. Bailey, et al., 7 IBLA 266 (1972), R. C. Bailey & C. Burglin, 10 IBLA 281 (1973), Helen S. Bailey & C. Burglin, 11 IBLA 51 (1973), Earnest G. & Dora A. Carter, C. Burglin, Michael F. Scanlan, C. Burglin, 12 IBLA 181 (1973)

C. Burglin & William D. Sexton v. Rogers C. B. Morton, et al., Civil No. F-9-73, D. Alas.

C. Burglin & R. C. Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-15-73, D. Alas.

C. Burglin & Helen Bailey v. U.S., Rogers C. B. Morton, et al., Civil No. F-19-73, D. Alas.

C. Burglin, Earnest G. Carter, Dora A. Carter, & Michael F. Scanlan v. U.S., Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. F-21-73, D. Alas.

Actions consolidated by order dated July 23, 1974. Judgment for defendant, August 5, 1974; aff'd., December 19, 1975; cert. denied, May 19, 1976.

John W. Shaw, A-29143 (April 5, 1963)

John W. Shaw v. Stewart L. Udall, Secretary of the Interior, Civil No. 63-602, D. Ore. Aff'd., 264 F. Supp. 390 (1967); appeal docketed March 13, 1967; appeal dismissed.

Michael Shearn, 24 IBLA 259 (1976)

Michael Shern v. Thomas S. Kleppe, Secretary of the Interior & Arthur W. Zimmerman, Director of the New Mexico State office of the Bureau of Land Management, Civil No. CIV-76-338-P, D. N.M. Suit pending.

Shell Oil Co., A-30575 (October 31, 1966), Chargeability of Acreage Embraced in Oil & Gas Lease Offers 71 I.D. 337 (1964)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulated dismissal August 19, 1968.

Sinclair Oil & Gas Co., 75 I.D. 155 (1968)

Sinclair Oil & Gas Co. v. Stewart L. Udall, Secretary of the Interior, et al., Civil No. 5277, D. Wyo. Judgment for defendant, sub nom. Atlantic Richfield Co. v. Walter J. Hickel, 303 F. Supp. 724 (1969); aff'd., 432 F. 2d 587 (10th Cir. 1970); no petition.

Charles T. Sink, 82 I.D. 535 (1975)

Charles T. Sink v. Thomas S. Kleppe, Secretary of the Interior - Mining Enforcement & Safety Administration (MESA), United States Court of Appeals for the 4th Cir. Suit pending.

Skelly Oil Co., 16 IBLA 264 (1974)

Skelly Oil Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-411, D. N.M. Judgment for plaintiff, August 7, 1975 (opinion); no appeal.

Eldon L. Smith, A-30944 (October 15, 1968)

Eldon L. Smith v. Walter J. Hickel, Civil No. 69-245, D. Ariz. Judgment for defendant, February 3, 1970.

L. B. Smith, et al., A-30447 (October 29, 1965)

Charles J. Babington v. Stewart L. Udall, Civil No. 3048-65. Dismissed without prejudice for failure of prosecution, May 1, 1967; no appeal.

Stanley C. Soho, A-28135 (August 19, 1959), A-28135 Supp. (July 17, 1961), Supplemented by decision dated February 1, 1963, by Director, Bureau of Land Management, approved by the Secretary March 18, 1963.

Robert V. Ferry & Irving Baker v. Stewart L. Udall, Civil No. 1648 Tuc., D. Ariz. Judgment for defendant, September 3, 1963; aff'd., 336 F. 2d 706 (9th Cir. 1964); cert. denied, 381 U.S. 904 (1965).

Stanley C. Soho, et al., A-28175 (April 11, 1960)

Albert Meeks v. E. I. Rowland, Civil No. 3461-Phx., D. Ariz. Case dismissed, January 17, 1961; no appeal.

Southern Pacific Co., 76 I.D. 1 (1969)

Southern Pacific Co. v. Walter J. Hickel, Secretary of the Interior, Civil No. S-1274, D. Cal. Judgment for defendant, December 2, 1970 (opinion); no appeal.

Southern Pacific Co., Louis G. Wedekind, 77 I.D. 177 (1970), 20 IBLA 365 (1975)

George C. Laden, Louis Wedekind, Mrs. Vern Lear, Mrs. Arda Fritz, & Helen Laden Wagner, heirs of George H. Wedekind, Deceased v. Rogers C. B. Morton, et al., Civil No. R-2858, D. Nev. On June 20, 1974, remanded for further agency proceedings as originally ordered in 77 I.D. 117; Dist. Ct. reserves jurisdiction; supplemental complaint filed, August 1, 1975; judgment for defendant, November 29, 1976; appeal filed January 27, 1977.

Southport Land & Commercial Co., Sacramento 075330 (January 15, 1964)

Southport Land & Commercial Co. v. Stewart L. Udall, et al., Civil No. 42385, N.D. Cal. Dismissed as to defendant Stewart Udall, 244 F. Supp. 172 (1965); aff'd., 371 F. 2d 526 (9th Cir. 1967); no petition.

Southwest Welding & Manufacturing Division, Yuba Consolidated Industries, Inc., 69 I.D. 173 (1962)

Southwest Welding v. U.S., Civil No. 68-1658-CC, C.D. Cal. Judgment for plaintiff, January 14, 1970; appeal dismissed, April 6, 1970.

Southwestern Petroleum Corp., et al., 71 I.D. 206 (1964)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 5773, D. N.M. Judgment for defendant, March 8, 1965; aff'd., 361 F. 2d 650 (10th Cir. 1966); no petition.

Standard Oil Co. of California, et al., 76 I.D. 271 (1969)

Standard Oil Co. of California v. Walter J. Hickel, et al., Civil No. A-159-69, D. Alas. Judgment for plaintiff, 317 F. Supp. 1192 (1970); aff'd., sub nom. Standard Oil Co. of Cal. v. Rogers C. B. Morton, et al., 450 F. 2d 493 (9th Cir. 1971); no petition.

Standard Oil Co. of Texas, 71 I.D. 257 (1964)

California Oil Co. v. Secretary of the Interior, Civil No. 5729, D. N.M. Judgment for plaintiff, January 21, 1965; no appeal.

Starling Brokers, et al., 6 IBLA 237 (1972)

Hillin L. Arnold, et al. v. Rogers C. B. Morton, et al., Civil No. A-157-72 Civ., D. Alas. Judgment for defendant, March 20, 1974; rev'd. & remanded, January 23, 1976.

Ross Stegman, A-30812 (November 21, 1967), U.S. v. Adrian Edwards, 9 IBLA 197 (1973)

Ross Stegman v. Stewart L. Udall, Civil No. 6953 Phx., D. Ariz. Remanded to Hearing Examiner for taking of further evidence, December 12, 1969.

Adrian Edwards, Trustee for Ross Stegman, & real party in interest v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-58-PCT-CAM, D. Ariz. Judgment for plaintiff, September 10, 1975; appeal filed, November 6, 1975.

Billy Stewart, N.M. 4200, etc., approved by the Secretary, May 2, 1969.

D. L. Hannifin v. Walter J. Hickel, et al., Civil No. 8074, D. N.M. Judgment for defendant, January 6, 1970; remanded, May 25, 1970; judgment for defendant,

May 28, 1970; aff'd., 444 F. 2d 200 (10th Cir. 1971); no petition.

Elaine S. Stickelman, 9 IBLA 327 (1973)

Elaine S. Stickelman v. U.S. & Dept. of the Interior, et al., Civil No. LV-2112, D. Nev. Judgment for defendant, August 29, 1975; amended order judgment for defendant, September 4, 1975.

Omar Stratman, 16 IBLA 222 (1974)

Omar Stratman v. The Department of the Interior, Bureau of Land Management, Civil No. A74-103, D. Alas. Remanded to the Dept., May 6, 1976; appeal filed, June 30, 1976.

Florence Emily Tagala v. Amanda Nellie Ruth Price, A-30715 (November 10, 1966)

Amanda Price v. Udall, Civil No. 33-67, D. Alas. Judgment for plaintiff, 280 F. Supp. 393 (1968); remanded to Bureau of Land Management, 411 F. 2d 589 (9th Cir. 1969); no petition.

James K. Tallman, 68 I.D. 256 (1961)

James K. Tallman, et al. v. Stewart L. Udall, Civil No. 1852-62. Judgment for defendant, November 1, 1962 (opinion); rev'd., 324 F. 2d 411 (1963); cert. granted, 376 U.S. 961 (1964); Dist Ct. aff'd., 380 U.S. 1 (1965); rehearing denied, 380 U.S. 989 (1965).

Texaco, Inc., 75 I.D. 8 (1968)

Texaco Inc., a Corp. v. Secretary of the Interior, Civil No. 446-68. Judgment for plaintiff, 295 F. Supp. 1297 (1969); aff'd. in part & remanded, 437 F. 2d 636 (1970); aff'd. in part & remanded, July 19, 1972.

Texas Construction Co., 64 I.D. 97 (1957), Reconsideration denied, IBCA-73 (June 18, 1957)

Texas Construction Co. v. U.S., Ct. Cl. No. 224-58. Stipulated judgment for plaintiff, December 14, 1961.

Albert Thomas, et ux. (Contestees) v. Sam A. DeVilbiss, et ux. (Contestees), 10 IBLA 56 (1973)

Albert & Ellora Thomas v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-139-TUC-WCF, D. Ariz. Judgment for defendant, January 12, 1976; notice of appeal filed, February 5, 1976.

Estate of John Thomas, Deceased Cayuse Allottee No. 223 & Estate of Joseph Thomas, Deceased, Umatilla Allottee No. 877, 64 I.D. 401 (1957)

Joe Hayes v. Fred A. Seaton, Secretary of the Interior, Civil No. 859-581. Judgment for defendant, September 18, 1958; aff'd., 270 F. 2d 319 (1959); cert. denied, 364 U.S. 814 (1960); rehearing denied, 364 U.S. 906 (1960).

Thor-Westcliffe Development, Inc., 70 I.D. 134 (1963)

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, Civil No. 5343, D. N.M. Dismissed with prejudice, June 25, 1963.

See also:

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, et al., Civil No. 2406-61. Judgment for defendant, March 22, 1962; aff'd., 314 F. 2d 257 (1963); cert. denied, 373 U.S. 951 (1963).

Richard K. Todd, et al., 68 I.D. 291 (1961)

Bert F. Duesing v. Stewart L. Udall, Civil No. 290-62. Judgment for defendant, July 17, 1962 (oral opinion); aff'd., 350 F. 2d 748 (1965); cert. denied, 383 U.S. 912 (1966).

Atwood, et al. v. Stewart L. Udall, Civil Nos. 293-62 - 299-62, incl. Judgment for defendant, August 2, 1962; aff'd., 350 F. 2d 748 (1965); no petition.

E. B. Todhunter, A-28197 (May 23, 1960)

Victoria L. Cuccia v. Stewart L. Udall, Civil No. 3921-60. Judgment for defendant, September 17, 1963; no appeal.

Appeal of Toke Cleaners, 81 I.D. 258 (1974)

Thom Properties Inc., d/b/a Toke Cleaners & Launderers v. U.S., Department of the Interior, Bureau of Indian Affairs, Civil No. A3-74-99, D. N.D. Stipulation for dismissal & order dismissing case, June 16, 1975.

Estate of Phillip Tooisgah, 4 IBIA 189; 82 I.D. 541 (1975)

Jonathan Morris & Velma Tooisgah v. Thomas J. Kleppe, Secretary of the Interior, Civil No. CIV-76-0037-D, W.D. Okla. Suit pending.

Tree Land Nursery, Inc., IBCA-436 (October 31, 1966)

Tree Land Nursery, Inc. v. U.S., Ct. Cl. 238-67. Judgment for plaintiff, May 13, 1969.

Tyee Construction Co., IBCA-112 & 113 (April 30, 1958)

Tyee Construction Co. v. U.S., Ct. Cl. No. 312-60. Judgment for defendant, June 1, 1962; no appeal.

Uniform Relocation Assistance Appeal of Sidney Gelb, 2 OHA 59 (1976)

Sidney Gelb v. Thomas Kleppe, individually & officially as the Secretary of Interior, Civil No. 76-1931. Suit pending.

Uniform Relocation Assistance Appeal of Numerous Navajo Persons Who Reside on Black Mesa in Arizona, 1 OHA 292 (1976)

Buck Austin, Lilly, Jack & Billy Chief, Alta Rose Albert, Betty Crank, Manymule's Daughter #2, Steven & Kee Lake, & Kee Begay v. Morris Thompson, Commissioner of Indian Affairs, Civil No. CIV-76-418-PCT-CAM, D. Ariz. Suit pending.

Union Oil Co. Bid on Tract 228, Brazos Area, Texas Offshore Sale, 75 I.D. 147 (1968), 76 I.D. 69 (1969)

The Superior Oil Co., et al. v. Stewart L. Udall, Civil No. 1521-68. Judgment for plaintiff, July 29, 1968, modified, July 31, 1968; aff'd., 409 F. 2d 1115 (1969); dismissed as moot, June 4, 1969; no petition.

Union Oil Co. of California, Ramon P. Colvert, 65 I.D. 245 (1958)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 3042-58. Judgment for defendant, May 2, 1960 (opinion); aff'd., 289 F. 2d 790 (1961); no petition.

Union Oil Co. of California, et al., 71 I.D. 169 (1964), 72 I.D. 313 (1965)

Penelope Chase Brown, et al. v. Stewart Udall, Civil No. 9202, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, September 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976.

Equity Oil Co. v. Stewart L. Udall, Civil No. 9462, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 9464, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Harlan H. Hugg, et al. v. Stewart L. Udall, Civil No. 9252, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Barnette T. Napier, et al. v Secretary of the Interior, Civil No. 8691, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, September 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976.

John W. Savage v. Stewart L. Udall, Civil No. 9458, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

The Oil Shale Corp., et al. v. Secretary of the Interior, Civil No. 8680, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, September 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976.

The Oil Shale Corp., et al. v. Stewart L. Udall, Civil No. 9465, D. Colo. Order to Close Files & Stay Proceedings, March 25, 1967.

Joseph B. Umpleby, et al. v. Stewart L. Udall, Civil No. 8685, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971; judgment for plaintiff, 370 F. Supp. 108 (1973); vacated & remanded, September 22, 1975; petition for rehearing en banc denied; cert. denied, June 21, 1976.

Union Oil Co. of California, a Corp. v. Stewart L. Udall, Civil No. 9461, D. Colo. Order to Close Files & Stay Proceedings, March 25, 1967.

Union Oil Co. of California, 71 I.D. 287 (1964)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 2595-64. Judgment for defendant, December 27, 1965; no appeal.

Union Pacific R.R., 72 I.D. 76 (1965)

The State of Wyoming & Gulf Oil Corp. v. Stewart L. Udall, etc., Civil No. 4913, D. Wyo. Dismissed with prejudice, 255 F. Supp. 481 (1966); aff'd., 379 F. 2d 635 (10th Cir. 1967); cert. denied, 389 U.S. 985 (1967).

U.S. v. Alonzo A. Adams, et al., 64 I.D. 221 (1957), A-27364 (July 1, 1957)

Alonzo A. Adams, et al. v. Paul B. Witmer, et al., Civil No. 1222-57-Y, S.D. Cal. Complaint dismissed, November 27, 1957 (opinion); rev'd. & remanded, 271 F. 2d 29 (9th Cir. 1958); on rehearing, appeal dismissed as to Witmer; petition for rehearing by Berriman denied, 271 F. 2d 37 (9th Cir. 1959).

U.S. v. Alonzo Adams, Civil No. 187-60-WM, S.D. Cal. Judgment for plaintiff, January 29, 1962 (opinion); judgment modified, 318 F. 2d 861 (9th Cir. 1963); no petition.

U.S. v. Ken & Kenneth D. Alexander, 17 IBLA 421 (1974)

Ken & Kenneth D. Alexander v. The Secretary of the Interior, Civil No. 75-465, D. Ore. Suit pending.

U.S. v. A. F. Anderson, et al., 15 IBLA 123 (1974)

A. F. Anderson, Wilton Dale, William F. Mackey, Arthur Roberts, Kenneth Roberts, Hugh Scott, Ester Desmarais, Louis D. Desmarais, Ernest L. Meunier, et al. v. Rogers C. B. Morton, Secretary of the Interior & The Board of Land Appeals, Civil No. C74-151, D. Wyo. Judgment for defendant, November 7, 1975.

Consolidated with Walter H. Burkhardt, et al. v. Rogers C. B. Morton, et al., Civil No. C74-152, D. Wyo., for purposes of appeal by order of November 19, 1975; dismissed, November 28, 1975.

U.S. v. Arizona Exploration Co., et al., A-28876 (June 22, 1962)

Blaine J. Lord, et al. v. Roy T. Helmandollar, et al., Civil No. 987-63. Judgment for defendants, September 30, 1963; appeal dismissed, 348 F. 2d 780 (1965); cert. denied, 383 U.S. 928 (1966); rehearing denied, 384 U.S. 947 (1966).

U.S. v. Melton E. Baker, 23 IBLA 319 (1976)

Melton E. Baker v. U.S., Thomas Kleppe, Individually & as Secretary of the Interior & Stanley Gurnewald, Individually & as District Ranger of the Forest Service of the U.S. Dept. of Agriculture, Civil No. CIV 76-408 PCT WPC, D. Ariz. Suit pending.

U.S. v. E. A. & Esther Barrows, 76 I.D. 299 (1969)

Esther Barrows, as an individual & as Executrix of the Last Will of E. A. Barrows, deceased v. Walter J. Hickel, Civil No. 70-215-CC, C.D. Cal. Judgment for defendant, April 20, 1970; aff'd., 447 F. 2d 80 (9th Cir. 1971).

U.S. v. J. L. Block, 80 I.D. 571 (1973)

J. L. Block v. Rogers Morton, Secretary of the Interior, Civil No. LV-74-9, BRT, D. Nev. Dismissed with prejudice, June 6, 1975; notice of appeal, July 3, 1975.

U.S. v. Blue Bell Gold Mining Co., et al., 17 IBLA 182 (1974)

Blue Bell Gold Mining Co. v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. C74-698 S, W.D. Wash. Judgment for defendant, September 18, 1975; no appeal.

U.S. v. Catherine R. Blythe, 16 IBLA 94 (1975)

Catherine R. Blythe v. Thomas S. Kleppe, Secretary of the Interior, Civil No. CIV 75-750 B, D. N.M. Suit pending.

U.S. v. Lloyd W. Booth, 76 I.D. 73 (1969)

Lloyd W. Booth v. Walter J. Hickel, Civil No. 42-69, D. Alas. Judgment for defendant, June 30, 1970; no appeal.

U.S. v. R. B. Borders, A-28624 (October 23, 1961)

J. R. Osborne v. Harold C. Hammitt, Civil No. 414, D. Nev. Judgment for defendant, August 19, 1964 (opinion); no appeal.

U.S. v. Alice A. & Carrie H. Boyle, 76 I.D. 61, 318 (1969), Reconsideration denied, January 22, 1970.

Alice A. & Carrie H. Boyle v. Rogers C. B. Morton, Secretary of the Interior, Civil No. Civ-71-491 Phx WEC, D. Ariz. Judgment for plaintiff, May 4, 1972; appeal docketed September 27, 1972.

U.S. v. R. W. Brubaker, et al., A-30636 (July 24, 1968), 80 I.D. 261 (1973)

R. W. Brubaker, a/k/a Ronald W. Brubaker, B. A. Brubaker, a/k/a Barbara A. Brubaker, & William J. Mann, a/k/a W. J. Mann v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-1228 EC, C.D. Cal. Dismissed with prejudice, August 13, 1973; aff'd., June 27, 1974; no petition.

U.S. v. Joe W. Bryant, 25 IBLA 247 (1976)

Joe E. Bryant v. Secretary of the Interior, Civil No. A76-84, D. Alas. Suit pending.

U.S. v. Henrietta & Andrew Julius Bunkowski, 5 IBLA 102; 79 I.D. 43 (1972)

Henrietta & Andrew Julius Bunkowski v. L. Paul Appelgate, District Manager, Bureau of Land Management, Thomas S. Kleppe, Secretary of the Interior, et al., Civil No. R-76-182-BRT, D. Nev. Suit pending.

U.S. v. Calhoun & Howell of Oregon, Ltd., U.S. v. Lee Temple, A-31004 (August 29, 1969)

Calhoun & Howell of Oregon, Ltd. v. Walter J. Hickel, Civil No. 70-155, D. Ore. Judgment for defendant, September 24, 1970; no appeal.

U.S. v. John C. Chapman, et al., A-30581 (July 16, 1968)

John C. Chapman, et al. v. U.S., Civil No. 69-12 Pct., D. Ariz. Judgment for defendant, January 18, 1972; no appeal.

U.S. v. Charleston Stone Products, Inc., 9 IBLA 94 (1973)

Charleston Stone Products Co. v. Rogers Morton, Secretary of the Interior, Civil No. LV-2039-BRT, D. Nev. Vacated & remanded to the Dept. for further proceedings, November 7, 1974 (opinion); appeal filed December 16, 1974.

U.S. v. Nick Chournos, A-28577 (July 14, 1961)

Nick Chournos v. U.S., Civil No. C-164-61, D. Utah. Complaint dismissed, January 9, 1962; no appeal.

Nick Chournos, et al. v. U.S., et al., Civil No. C-238-62, D. Utah. Dismissed, June 28, 1963; aff'd., 335 F. 2d 918 (10th Cir. 1964); no petition.

U.S. v. Willard Christensen, A-27549 (May 14, 1958)

La Fortuna Uranium Mines, Inc. v. Fred A. Seaton, Civil No. 191-59. Judgment for defendant, April 4, 1960; no appeal.

U.S. v. Clear Gravel Enterprises, Inc., 2 IBLA 285 (1971)

Clear Gravel Enterprises, Inc. v. Nolan Keil, State Dir., Bureau of Land Management, State of Nevada, & Rolla Chandler, Chief Div. of Technical Services, Bureau of Land Management, Reno, Nevada, Civil No. LV-1654, D. Nev. Judgment for defendant, May 4, 1972; aff'd., October 9, 1974; rehearing denied, January 13, 1975; cert. denied, April 21, 1975.

U.S. v. J. R. Clements, A-27751 (December 15, 1958)

John Raymond Clements v. Fred A. Seaton, Civil No. 560-59. Judgment for defendant, January 13, 1960; no appeal.

U.S. v. Elsie Cody, 1 IBLA 92 (1970)

Elsie Cody v. Walter J. Hickel, Civil No. 1-70-125, D. Idaho. Remanded to the Secretary of the Interior for taking of additional evidence, December 6, 1971; appeal withdrawn, March 10, 1972.

U.S. v. Alfred Coleman, A-28557 (March 27, 1962)

U.S. v. Alfred Coleman, Civil No. 63-956-WB, S.D. Cal. Judgment for defendant, February 25, 1965 (opinion); remanded, 363 F. 2d 190 (9th Cir. 1966); aff'd., 379 F. 2d 555 (9th Cir. 1967); cert. granted, 389 U.S. 970 (1967); rev'd. & remanded to 9th Cir., 390 U.S. 599 (1968); rehearing denied, 391 U.S. 961 (1968); aff'd., 405 F. 2d 72 (9th Cir. 1968); cert. denied, 394 U.S. 907 (1969).

U.S. v. Ford M. Converse, 72 I.D. 141 (1965)

Ford M. Converse v. Stewart Udall, Civil No. 65-581, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); aff'd., 399 F. 2d 616 (9th Cir. 1968); cert. denied, 393 U.S. 1025 (1969).

U.S. v. Jesse W. Crawford, A-30820 (January 29, 1968)

Jesse W. Crawford v. Stewart L. Udall, Civil No. 6969 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., 442 F. 2d 1030 (9th Cir. 1971); no petition.

U.S. v. Alvis F. Denison, et al., 71 I.D. 144 (1964), 76 I.D. 233 (1969)

Marie W. Denison, individually & as executrix of the Estate of Alvis F. Denison, deceased v. Stewart L. Udall, Civil No. 963 D. Ariz. Remanded, 248 F. Supp. 942 (1965).

Leo E. Shoup v. Stewart L. Udall, Civil No. 5822-Phx., D. Ariz. Judgment for defendant, January 31, 1972.

Reid Smith v. Stewart L. Udall, etc., Civil No. 1053, D. Ariz. Judgment for defendant, January 31, 1972; aff'd., February 1, 1974; cert. denied, October 15, 1974.

U.S. v. J. S. Devenny, A-30289 (August 6, 1964)

J. S. Devenny v. Stewart L. Udall, Civil No. 6283, W.D. Wash. Dismissed, June 22, 1966; no appeal.

U.S. v. Nelson E. Devine & Raymond E. Bryant, A-30435 (April 28, 1965), 2 IBLA 258 (1971)

U.S. v. Raymond E. Bryant, Civil No. 9929, E.D. Cal. Remanded to Dept. for exercise of discretion, September 10, 1969; decision of BLM dated January 16, 1970 aff'd. by the Board of Land Appeals, May 10, 1971.

U.S. v. Aloys A. & Doris E. L. Dietemann, 26 IBLA 356 (1976)

Aloys A. & Doris E. Dietemann v. Thomas L. Kleppe, Secretary of the Interior, Curtis Berklund, Director of the Bureau of Land Management, et al., Civil No. 76-3532 RMT, C.D. Cal. Summary judgment for defendant, February 9, 1977.

U.S. v. Francis Dlouhy, et al., A-27668 (September 24, 1958)

Francis N. Dlouhy v. Fred A. Seaton, Civil No. 405-59. Judgment for defendant, May 3, 1960; appeal dismissed, November 28, 1960.

U.S. v. The Dredge Corp., A-28022 (December 18, 1959)

The Dredge Corp. v. J. Russell Penny, Civil No. 396, D. Nev. Judgment for defendant, September 25, 1962; remanded, 338 F. 2d 456 (9th Cir. 1964); judgment for plaintiff, August 8, 1966; judgment for defendants, 398 F. 2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

U.S. v. The Dredge Corp., 7 IBLA 136 (1972)

The Dredge Corp. v. Rogers B. Morton, et al., Civil No. LV-2029, D. Nev. Stipulated dismissal, February 12, 1974.

U.S. v. Maurice Duval, et al., 1 IBLA 103 (1970)

Maurice Duval, et al. v. Rogers C. B. Morton, Civil No. 71-684, D. Ore. Dismissed, 347 F. Supp. (1972); aff'd., December 19, 1973 (opinion).

U.S. v. Elkhorn Mining Co., 2 IBLA 383 (1971)

Elkhorn Mining Co. v. Rogers Morton, Civil No. 2111, D. Mont. Judgment for defendant, January 19, 1973; no appeal.

U.S. v. Ralph Fairchild, A-30803 (January 19, 1968)

Minerals Trust Corp. v. Stewart L. Udall, Civil No. 6960 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., 442 F. 2d 1030 (9th Cir. 1971).

U.S. v. Kathryn R. Fitzgerald, A-30973 (July 25, 1969).

Kathryn R. Fitzgerald & John Holden v. Walter J. Hickel, Civil No. 70-421-Phx., D. Ariz. Judgment for defendant, November 23, 1970.

U.S. v. Everett Foster, et al., 65 I.D. 1 (1958)

Everett Foster, et al. v. Fred A. Seaton, Civil No. 344-58. Judgment for defendants, December 5, 1958 (opinion); aff'd., 271 F. 2d 836 (1959); no petition.

U.S. v. Jack L. Gardener, 18 IBLA 175 (1974)

Jack L. Gardener v. Secretary of the Interior, Civil No. 75-1413-R, C.D. Cal. Judgment for defendant, June 16, 1975; notice of appeal filed, August 8, 1975.

U.S. v. Fred Garula, A-29948 (June 3, 1964)

Fred Garula v. Stewart L. Udall, Civil No. 8998, D. Colo. Judgment for plaintiff, 268 F. Supp. 910 (1967); rev'd., 405 F. 2d 1181 (10th Cir. 1968); no petition.

U.S. v. Golden Eagle Mining Corp., A-30864 (September 25, 1967)

Golden Eagle Mining Corp. v. Stewart L. Udall, Secretary of the Interior, Civil No. S-937, E.D. Cal. Dismissed for lack of prosecution, October 6, 1969; no appeal.

U.S. v. Golden Grigg, et al., 82 I.D. 123 (1975)

Golden T. Grigg, LeFawn Grigg, Fred Baines, Otis H. Williams, Kathryn Williams, Lovell Taylor, William A. Anderson, Saragene Smith, Thomas M. Anderson,

Bonnie Anderson, Charles L. Taylor, Darlene Baines, Luann & Paul E. Hogg v. U.S., Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-75, D. Idaho. Suit pending.

U.S. v. Gunsight Mining Co., 5 IBLA 62 (1972)

Gunsight Mining Corp. v. Rogers C. B. Morton, Civil No. 72-92 Tuc, D. Ariz. Dismissed, September 11, 1973; no appeal.

U.S. v. C. V. Hallenbeck, et al., 21 IBLA 296 (1975)

Charles V. Hallenbeck, Jr. & Clyde A. Hallenbeck, as Individuals, as Trustees, & as Members of a Class v. Bureau of Reclamation, Civil No. 75-M-786, D. Colo. Suit pending.

U.S. v. Urban Harenberg, et al., 11 IBLA 153 (1973)

Century Industries-Flagstaff, an Arizona Corp. (successor-in-interest to Urban, LaVaun, Sylvan L. & Beth Harenberg, & to Flagstaff Service & Materials Co., an Arizona Corp., bankrupt) v. U.S., Rogers Morton, Secretary of the Interior, et al., Civil No. 75-157 PCT WPC, D. Ariz. Suit pending.

U.S. v. Richard P. Haskins, A-30737 (December 19, 1966), 3 IBLA 77 (1971)

Richard P. Haskins for Himself & as Admin. of the Estate of Bartholomew H. Haskins, Deceased v. Udall, Civil No. 67-1815-CC, C.D. Cal. Judgment for defendant, April 15, 1968; remanded to the Director, Bureau of Land Management for an exercise of discretion, October 3, 1969.

U.S. v. Richard P. Haskins, Civil No. 72-246 JWC, C.D. Cal. Judgment for plaintiff, May 18, 1972 (opinion); rehearing denied, June 28, 1972; aff'd. & remanded for further proceedings, October 25, 1974; no petition.

U.S. v. Gerald D. Heden, et al., 19 IBLA 326 (1975)

Gerald D. & Sharon A. Heden, John D. & Diane E. Prichard v. The Secretary of the Interior, Civil No. 75-543, D. Ore. Suit pending.

U.S. v. Henault Mining Co., 73 I.D. 184 (1966)

Henault Mining Co. v. Harold Tysk, et al., Civil No. 634, D. Mont. Judgment for plaintiff, 271 F. Supp. 474 (1967); rev'd. & remanded for further proceedings, 419 F. 2d 766 (9th Cir. 1969); cert. denied, 398 U.S. 950 (1970); judgment for defendant, October 6, 1970.

U.S. v. Charles H. Henrikson, et al., 70 I.D. 212 (1963)

Charles H. Henrikson, et al. v. Stewart L. Udall, et al., Civil No. 41749, N.D. Cal. Judgment for defendant, 229 F. Supp. 510 (1964); aff'd., 350 F. 2d 949 (9th Cir. 1965); cert. denied, 384 U.S. 940 (1966).

U.S. v. Taylor T. Hicks, et al., A-30780 (October 24, 1967)

Taylor T. Hicks, et al. v. U.S., Stewart L. Udall, Secretary of the Interior, Civil No. Civ.-1202 Pct., D. Ariz. Judgment for defendant, March 26, 1970.

U.S. v. Ernest Higbee, et al., A-31063 (April 1, 1970)

Ernest Higbee, et al. v. Rogers C. B. Morton, et al., Civil No. 1674, D. Nev. Judgment for defendant, May 5, 1972; vacated & remanded, July 22, 1974; amended, September 13, 1974; vacated & remanded to the Secretary for taking of further evidence for reconsideration of the issues, December 19, 1974.

U.S. v. Humboldt Placer Mining Co. & Del De Rosier, 79 I.D. 709 (1972)

Humboldt Placer Mining Co. & Del De Rosier v. Secretary of the Interior, Civil No. S-2755, E.D. Cal. Dismissed with prejudice, June 12, 1974; appeal docketed, September 23, 1974.

U.S. v. Ideal Cement Co., 5 IBLA 235 (1972)

Ideal Basic Industries, Inc., formerly known as Ideal Cement Co. v. Rogers C. B. Morton, Civil No. J-12-72, D. Alas. Judgment for defendant, February 25, 1974; motion to vacate judgment denied, May 6, 1974; aff'd., September 28, 1976; petition for rehearing en banc denied, November 16, 1976.

U.S. v. Independent Quick Silver Co., 72 I.D. 367 (1965)

Independent Quick Silver Co., an Oregon Corp. v. Stewart L. Udall, Civil No. 65-590, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); appeal dismissed.

U.S. v. Menzel G. Johnson, 16 IBLA 234 (1974) See M. G. Johnson

U.S. v. R. B. Johnson, A-30405 (October 28, 1965)

R. B. Johnson v. Stewart L. Udall, Civil No. 1071, D. Ariz. Judgment for defendant, November 21, 1967; no appeal.

U.S. v. Robert N. Johnson, et al., A-30828 (January 29, 1968)

Robert N. Johnson, et al. & Thelma A. Johnson as individ. & as Executrix of Nolan F. Fultz estate v. Stewart L. Udall, Civil No. 68-994-AAH, C.D. Cal. Judgment for plaintiff, 292 F. Supp. 738 (1968); no appeal.

U.S. v. David L. & Kathryn King, A-30217 (December 29, 1964)

David L. & Kathryn King v. Bureau of Land Management, Civil No. S2765, E.D. Cal. Dismissed, October 30, 1973; no appeal.

U.S. v. William C. King, 15 IBLA 210 (1974)

William C. King v. U.S., & The Secretary of the Interior, et al., Civil No. 74-151-TUC-JAW, D. Ariz. Judgment for defendant, July 10, 1975; appeal docketed, November 19, 1975.

U.S. v. Horace J. & Elsie Marie Knowlton, A-30912 (May 21, 1968)

Elsie Marie & Horace J. Knowlton v. Walter J. Hickel, Secretary of the Interior, Civil No. C-191-69, D. Utah. Judgment for defendant, November 13, 1970.

U.S. v. Charles W. & Cora A. Kohl, 5 IBLA 298 (1972)

Charles W. & Cora A. Kohl v. Steve Yurich & Rogers C. B. Morton, et al., Civil No. 2155, D. Mont. Dismissed with prejudice, January 17, 1973; no appeal.

U.S. v. Richard Dean Lance, 73 I.D. 218 (1966)

Richard Dean Lance v. Stewart L. Udall, et al., Civil No. 1864, D. Nev. Judgment for defendant, January 23, 1968; no appeal.

U.S. v. Lane Minerals, Inc., A-30497 (March 28, 1966)

Lane Minerals, Inc. v. Stewart L. Udall & the Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation, Civil No. 67-535, D. Ore. Judgment for defendant, February 2, 1970.

U.S. v. Ethel Schell Larsen & Minerals Trust Corp., 9 IBLA 247 (1973)

Ethel Schell Larsen & Minerals Trust Corp. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 73-119-TUC-JAW, D. Ariz. Judgment for defendant, September 24, 1974; no appeal.

U.S. v. William A. McCall, Sr., Estate of Olaf Henry Nelson, Deceased, 7 IBLA 21; 79 I.D. 457 (1972)

William A. McCall, Sr. & the Estate of Olaf Henry Nelson, deceased v. John S. Boyles, District Manager, Bureau of Land Management, Thomas S. Kleppe, Secretary of Interior, et al., Civil No. LV-76-155 RDF, D. Nev. Suit pending.

U.S. v. William A. McCall, Sr., The Dredge Corp., Estate of Olaf H. Nelson, Deceased, Small Tract Applicants Assoc., Intervenor, 78 I.D. 71 (1971)

William A. McCall, Sr., The Dredge Corp. & Olaf H. Nelson v. John F. Boyles, et al., Civil No. 74-68(RDF), D. Nev. Judgment for defendant, June 7, 1976.

U.S. v. William A. McCall & R. J. Kaltenborn, 1 IBLA 115 (1970)

William A. McCall v. Rogers C. B. Morton, Secretary of the Interior, et al., Civil No. 74-70 RDF, D. Nev. Judgment for defendant, October 1, 1975.

U.S. v. Kenneth McClarty, 71 I.D. 331 (1964), 76 I.D. 193 (1969)

Kenneth McClarty v. Stewart L. Udall, et al., Civil No. 2116, E.D. Wash. Judgment for defendant, May 26, 1966; rev'd. & remanded, 408 F. 2d 907 (9th Cir. 1969); remanded to the Secretary, May 7, 1969; vacated & remanded to Bureau of Land Management, August 13, 1969.

U.S. v. Charles Maher, et al., 5 IBLA 209, 79 I.D. 109 (1972)

Charles Maher & L. Franklin Mader v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-72-153, D. Idaho. Dismissed without prejudice, April 3, 1973.

U.S. v. Mary A. Mattey, 67 I.D. 63 (1960)

U.S. v. Edison R. Nogueira, et al., Civil No. 65-220-PH, C.D. Cal. Judgment for defendant, November 16, 1966; rev'd. & remanded, 403 F. 2d 816 (1968); no petition.

U.S. v. Alvin M. May, A-30675 (July 25, 1968)

Alvin M. May v. Stewart Udall, et al., Civil No. R-2107, D. Nev. Judgment for plaintiff, December 15, 1969.

U.S. v. Frank & Wanita Melluzzo, 76 I.D. 160 (1969)

Frank & Wanita Melluzzo v. Rogers C. B. Morton, Civil No. CIV 73-308 PHX CAM, D. Ariz. Judgment for defendant, June 19, 1974; rev'd. & remanded for further proceedings, January 14, 1976 (opinion).

U.S. v. Frank & Wanita Melluzzo, et al., 76 I.D. 181 (1969), Reconsideration, 1 IBLA 37, 77 I.D. 172 (1970)

WJM Mining & Development Co., et al. v. Rogers C. B. Morton, Civil No. 70-679, D. Ariz. Judgment for defendant, December 8, 1971; dismissed, February 4, 1974.

U.S. v. Mineral Ventures, Ltd., 80 I.D. 792 (1973)

Mineral Ventures, Ltd. v. The Secretary of the Interior, Civil No. 74-201, D. Ore. Judgment for defendant, July 10, 1975; notice of appeal filed September 5, 1975.

U.S. v. G. Patrick Morris, et al., 82 I.D. 146 (1975)

G. Patrick Morris, Joan E. Roth, Elise L. Neeley, Lyle D. Roth, Vera M. Baltzor (formerly Vera M. Noble), Charlene S. & George R. Baltzor, Juanita M. & Nellie Mae Morris, Milo & Peggy M. Axelsen, & Farm Development Corp. v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-75-74, D. Idaho. Suit pending.

U.S. v. Ernest Evon Moseley, A-30971 (December 13, 1967)

Ernest E. Moseley v. Udall, Civil No. 6939 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., 442 F. 2d 1030 (9th Cir. 1971); no petition.

U.S. v. G. C. (Tom) Mulkern, A-27746 (January 19, 1959)

G. C. (Tom) Mulkern v. James Keough, Civil No. 299, D. Nev. Judgment for defendant, February 19, 1963 (opinion); aff'd., 326 F. 2d 896 (9th Cir. 1964); no petition.

U.S. v. Christian F. Murer, 4 IBLA 242 (1972)

Christian F. Murer v. Rogers C. B. Morton, Secretary of the Interior, Civil No. C-3941, D. Colo. Judgment for defendant, March 22, 1973 (oral opinion); no appeal.

U.S. v. National Motor Service Co., 15 IBLA 23 (1974)

National Motor Service Co., Successor to Gary K. Lloyd v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-74-41, D. Idaho. Complaint dismissed with prejudice, February 24, 1976.

U.S. v. Leonard F. Nelson, IBLA 71-57 (December 6, 1972)

Leonard F. Nelson v. Rogers C. B. Morton, et al., Civil No. A-3-73, D. Alas. Dismissed with prejudice, 368 F. Supp. 692 (1974); rev'd. & remanded, January 14, 1976; no petition.

U.S. v. Melvin L. Nevitt, A-30030 (July 28, 1964)

U.S. v. Melvin L. Nevitt, Civil No. 3423-SD-C, S.D. Cal. Judgment for plaintiff, November 28, 1966; no appeal.

U.S. v. New Jersey Zinc Co., 74 I.D. 191 (1967)

The New Jersey Zinc Corp., a Del. Corp. v. Stewart L. Udall, Civil No. 67-C-404, D. Colo. Dismissed with prejudice, January 5, 1970.

U.S. v. W. G. & Eva Rose Nickol, 9 IBLA 117 (1973)

W. G. & Eva Rose Nickol v. U.S. & Rogers C. B. Morton, Secretary of the Interior, Civil No. 9995, D. N.M. Dismissed, October 5, 1973; rev'd. & remanded, June 18, 1974; rehearing denied, September 30, 1974; remanded to the Dept. for further proceedings, January 30, 1975; no appeal.

U.S. v. Lloyd O'Callaghan, Sr., et al., 79 I.D. 689 (1972), U.S. v. Lloyd O'Callaghan, Sr., Contest No. R-04845 (July 7, 1975)

Lloyd O'Callaghan, Sr., Individually & as Executor of the Estate of Ross O'Callaghan v. Rogers Morton, et al., Civil No. 73-129-S, S.D. Cal. Aff'd. in part & remanded, May 14, 1974.

U.S. v. Wilma L. Oldaker, A-30378 (August 26, 1965)

Wilma Oldaker v. Stewart L. Udall, Civil No. A-98-65, D. Alas. Stipulated dismissal with prejudice, March 3, 1967; no appeal.

U.S. v. J. R. Osborne, et al., 77 I.D. 83 (1970)

J. R. Osborne, individually & on behalf of R. R. Borders, et al. v. Rogers C. B. Morton, et al., Civil No. 1564, D. Nev.

Judgment for defendant, March 1, 1972; remanded to Dist. Ct. with directions to reassess Secretary's conclusion, February 22, 1974; remanded to the Dept. with orders to re-examine the issues, December 3, 1974.

U.S. v. Paul C. Poncia, et al., 11 IBLA 302 (1973)

Paul C., Opal L., John C., & Dorothy Poncia v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 1-73-93, D. Idaho. Suit pending.

U.S. v. Richard C. Porter, et al., A-29882 (April 24, 1964)

Hal W. Eldridge, et al. v. Secretary of the Interior, Civil No. 64-353, D. Ore. Judgment for defendant, December 15, 1965 (opinion); no appeal.

U.S. v. E. V. Pressentin, et al., A-27495 (April 2, 1958)

E. V. Pressentin v. Fred A. Seaton, Civil No. 4804, W.D. Wash. Voluntary dismissal by plaintiff entered July 24, 1959.

E. V. Pressentin, et al. v. Fred A. Seaton, Civil No. 1907-59. Judgment for defendant, January 15, 1960; rev'd. & remanded, 284 F. 2d 195 (1960); see A-30004, 71 I.D. 447 (1964).

U.S. v. E. V. Pressentin & Devisees of the H. S. Martin Estate, 71 I.D. 447 (1964)

E. V. Pressentin, Fred J. Martin, Admin. of H. A. Martin Estate v. Stewart L. Udall & Charles Stoddard, Civil No. 1194-65. Judgment for defendant, March 19, 1969; no appeal.

U.S. v. C. F. Pruess, Sr., A-28641 (August 22, 1961)

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 1331-62. Judgment for defendant, May 12, 1964; remanded, 359 F. 2d 615 (1965); judgment for defendant, January 4, 1966; per curiam dec., remanded for transfer to Dist. Ct. for Oregon. Not reported.

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 67-167, D. Ore. Judgment for defendant, 286 F. Supp. 138 (1968); aff'd., 410 F. 2d 750 (9th Cir. 1969); cert. denied, 396 U.S. 967 (1969); rehearing denied, 397 U.S. 1003 (1970).

U.S. v. William D. Pulliam, et al., 1 IBLA 143 (1970)

William D. Pulliam, et al. v. Secretary of the Interior, Civil No. 71-649, D. Ariz. Dismissed on the merits, March 29, 1973; no appeal.

U.S. v. Marvin C. Ramsey, et al., 14 IBLA 152 (1974)

Marvin C. & Vesta Ruth Ramsey v. The Secretary of the Interior, Civil No. 74-192, D. Ore. Dismissed, May 1, 1975; appeal docketed, September 8, 1975.

U.S. v. Ramsher Mining & Engineering Co., 13 IBLA 268 (1973)

Ramsher Mining & Engineering Co. v. Secretary of the Interior, Bureau of Land Management, Civil No. CV-74-3062-WMB, C.D. Cal. Dismissed with prejudice, February 11, 1975; appeal docketed.

U.S. v. Cecil R. Reed, A-30354 (September 29, 1965)

Cecil R. Reed v. Stewart L. Udall, et al., Civil No. 1784, D. Nev. Judgment for defendant, December 19, 1967; aff'd., 416 F. 2d 377 (9th Cir. 1969); cert. denied, 397 U.S. 924 (1970).

U.S. v. George A. & Dorothy Relyea, A-30909 (June 25, 1968)

George A. & Dorothy Relyea v. Stewart Udall, Secretary of the Interior, Civil No. 3-68-20, D. Idaho. Judgment for defendant, February 19, 1970; no appeal.

U.S. v. Amos D. & Lena S. Robinette, A-31036, A-31133 (March 4, 1970)

Amos D. Robinette v. Rogers C. B. Morton, et al., Civil No. 71-1156-HP, C.D. Cal. Complaint dismissed with prejudice, October 22, 1971; appeal dismissed, April 18, 1972.

U.S. v. Robert B. Sainberg, 5 IBLA 270 (1972)

Robert B. Sainberg, Rose Mary Druse, Frank Patrick Vallely, Jr., & William J. Vallely v. Rogers C. B. Morton, Civil No. 72-217-PCT, D. Ariz. Dismissed, 363 F. Supp. 1259 (1973); no appeal.

U.S. v. Edwin R. Saurers, et al., A-30097 (July 9, 1964)

Edwin R. Saurers, et al. v. Stewart L. Udall, Civil No. 6245, W.D. Wash. Judgment for defendant, July 19, 1965; no appeal.

U.S. v. Charles L. Seeley, et al., A-28127 (January 28, 1960)

Charles L. Seeley, et al. v. Secretary of the Interior, Civil No. 3693-60 & No. 41094, N.D. Cal. Judgment for defendant, July 29, 1964; appeal dismissed, December 16, 1964.

U.S. v. Ollie Mae Shearman, et al., 73 I.D. 386 (1966)
See Idaho Desert Land Entries - Indian Hill Group.

U.S. v. Silverton Mining & Milling Co., IBLA-70-22 (September 23, 1970)

Multiple Use Inc. v. Rogers C. B. Morton, Civil No. 71-211, D. Ariz. Judgment for defendant, 353 F. Supp. 184 (1972); aff'd., 504 F. 2d 448 (9th Cir. 1974); no petition.

U.S. v. Thomas R. Shuck, A-27965 (February 2, 1960)

Thomas R. Shuck v. Roy T. Helmandollar, Civil No. 682 Pct., D. Ariz. Judgment for defendant, December 7, 1961; no appeal.

U.S. v. U.S. Silica Corp., et al., A-30400 (August 24, 1965)

Simplot Industries, Inc. v. Udall, Civil No. 1024-S, D. Nev. Judgment for defendant, September 26, 1969; no appeal.

U.S. v. C. F. Snyder, et al., 72 I.D. 223 (1965)

Ruth Snyder, Adm'r(x) of the Estate of C. F. Snyder, Deceased, et al. v. Stewart L. Udall, Civil No. 66-C-131, D. Colo. Judgment for plaintiff, 267 F. Supp. 110 (1967); rev'd., 405 F. 2d 1179 (10th Cir. 1968); cert. denied, 396 U.S. 819 (1969).

U.S. v. Southern Pacific Co., 77 I.D. 41 (1970)

Southern Pacific Co., et al. v. Rogers C. B. Morton, et al., Civil No. S-2155, E.D. Cal. Judgment for defendant, November 20, 1974.

U.S. v. Clarence T. & Mary D. Stevens, 77 I.D. 97 (1970)

Clarence T. & Mary D. Stevens v. Walter J. Hickel, Civil No. 1-70-94, D. Idaho. Judgment for defendant, June 4, 1971.

U.S. v. Charles E. Stewart, A-28966 (September 25, 1962)

Charles E. Stewart v. Gordon Penny, et al., Civil No. 1619, D. Nev. Judgment for plaintiff, 238 F. Supp. 821 (1965); no appeal.

U.S. v. Cornelius D. Sullivan (a/k/a Corney Sullivan) & Josie L. Sullivan, 5 IBLA 275 (1972)

Cornelius D. & Josie L. Sullivan v. U.S., Ct. Cl. No. 193-69. Dismissed, October 27, 1972.

U.S. v. Elmer H. Swanson, 81 I.D. 14 (1974)

Elmer H. Swanson v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 4-74-10, D. Idaho. Dismissed without prejudice, December 23, 1975 (opinion).

U.S. v. C. Fred Underwood, et al., 22 IBLA 62 (1975)

C. Fred Underwood, Chloe Underwood & Jack D. Canon v. The Secretary of the Interior, Civil No. S-76-91 PCW, E.D. Cal. Suit pending.

U.S. v. Alfred N. Verrue, 75 I.D. 300 (1968)

Alfred N. Verrue v. U.S., et al., Civil No. 6898 Phx., D. Ariz. Rev'd. & remanded, December 29, 1970; aff'd., 457 F. 2d 1202 (9th Cir. 1971); no petition.

U.S. v. Kenneth O. Watkins & Harold E. L. Barton, A-29862 (April 24, 1966), A-30659 (October 19, 1967)

Harold E. L. Barton v. Stewart L. Udall, Secretary of the Interior & U.S., Civil No. 69-26, D. Ore. Judgment for defendant, March 17, 1971; aff'd., 498 F. 2d 288 (9th Cir. 1974); cert. denied, November 18, 1974.

U.S. v. Oscar W. Weiss, et al., A-30809 (September 14, 1967), 15 IBLA 198 (1974)

Oscar W. Weiss v. Stewart L. Udall, Civil No. C-882, D. Colo. Remanded, January 2, 1969.

U.S. v. Thomas C. Wells, A-30805 (January 8, 1968), A-30805 (Supp.) (April 25, 1969), A-30805 (Supp. II) (November 17, 1969)

Thomas C. Wells v. Udall, Civil No. S-693, E.D. Cal. Remanded to Secretary, December 12, 1968; remanded to Bureau of Land Mgmt. Time extended to November 1, 1970 to comply with requirements of Supp. II. Judgment for defendant, December 17, 1970.

U.S. v. Vernon O. & Ina C. White, 72 I.D. 552 (1965)

Vernon O. & Ina C. White v. Stewart L. Udall, Civil No. 1-65-122, D. Idaho. Judgment

for defendant, January 6, 1967; aff'd., 404 F. 2d 334 (9th Cir. 1968); no petition.

U.S. v. Frank W. Winegar, et al., 81 I.D. 370 (1974)

Shell Oil Co. & D. A. Shale, Inc. v. Rogers C. B. Morton, Secretary of the Interior, Civil No. 74-F-739, D. Colo. Suit pending.

U.S. v. Rodney Wood, et al., A-30697 (May 31, 1967)

Rodney Wood, et al. v. Stewart L. Udall, Secretary of the Interior & Orville L. Freeman, Secretary of Agriculture, Civil No. S-436, N.D. Cal. Dismissed without prejudice, November 7, 1967; amended complaint filed; judgment for defendant, March 27, 1969; no appeal.

U.S. v. Merle I. Zweifel, et al., 16 IBLA 74 (1974)

Walter H. Burkhardt, et al. v. Rogers C. B. Morton, Secretary of the Interior & The Board of Land Appeals, Civil No. C74-152, D. Wyo. Judgment for defendant, November 7, 1975.

Consolidated with A. F. Anderson, et al. v. Rogers C. B. Morton, et al., Civil No. C74-151, D. Wyo. for purposes of appeal by order of November 19, 1975. Dismissed, November 28, 1975.

U.S. v. Merle I. Zweifel, et al., 80 I.D. 323 (1973)

Merle I. Zweifel, et al. v. U.S., Civil No. C-5276, D. Colo. Dismissed without prejudice, October 31, 1973.

Kenneth Roberts, et al. v. Rogers C. B. Morton & The Interior Board of Land Appeals, Civil No. C-5308 D. Colo. Dismissed with prejudice, January 23, 1975 (opinion); appeal docketed, March 17, 1975.

United Technical Industries, Inc., A-29406 (April 24, 1963)

Jay Nielson v. J. E. Keough, et al., Civil No. C-158-63, D. Utah. Dismissed, July 13, 1964 (opinion); no appeal.

Paul Unruh v. Wesley Lawrence Edwards, A-30584 (September 21, 1966)

Paul E. Unruh v. Udall, et al., Civil No. 1894-N, D. Nev. Judgment for defendant, June 14, 1967; no appeal.

Utah Power & Light Co., 4 IBLA 62 (1971)

Utah Power & Light Co. v. Rogers C. B. Morton, et al., Civil No. C-5-72, D. Utah. Dismissed with prejudice, November 3, 1972; aff'd., September 20, 1974.

Utah Power & Light Co., 14 IBLA 372 (1974)

Utah Power & Light Co. v. Thomas S. Kleppe, in his official capacity as Secretary of the Interior, Civil No. C-76-136, D. Utah. Suit pending.

Henrietta Roberts Vaden, IBLA 74-1, dismissed by order, August 8, 1973, Petition for Reconsideration denied by order, May 29, 1975.

Henrietta Roberts Vaden, a/k/a Henrietta R. Vaden v. Thomas S. Kleppe, Secretary of the Interior, et al., Civil No. A75-223 CIV, D. Alas. Stipulated dismissal, March 31, 1976.

E. A. Vaughey, 63 I.D. 85 (1956)

E. A. Vaughey v. Fred A. Seaton, Civil No. 1744-56. Dismissed by stipulation, April 18, 1957; no appeal.

Estate of Cecelia Smith Vergote (Borger), Morris A. (K.) Charles & Caroline J. Charles (Brendale), 5 IBIA 96; 83 I.D. 209 (1976)

Confederated Tribes & Bands of the Yakima Indian Nation v. Thomas Kleppe, Secretary of the Interior & Phillip Brendale, Civil No. C-76-199, E.D. Wash. Suit pending.

Estate of Florence Bluesky Vessell (Unallotted Lac Courte Oreilles Chippewa of Wisconsin), 1 IBIA 312, 79 I.D. 615 (1972)

Constance Jean Hollen Eskra v. Rogers C. B. Morton, et al., Civil No. 72-C-428, D. Wis. Dismissed, 380 F. Supp. 205 (1974); rev'd., September 29, 1975; no petition.

Burt A. Wackerli, et al., 73 I.D. 280 (1966)

Burt & Lueva G. Wackerli, et al. v. Stewart L. Udall, et al., Civil No. 1-66-92, D. Idaho. Amended complaint filed March 17, 1971; judgment for plaintiff, February 28, 1975.

Estate of Amelia Keyes Abbott Viramontes Walker, IA-1339 (April 5, 1966)

Earlene Ida Abbott Simons v. Udall, et al., Civil No. 2640, D. Mont. Judgment for defendant, 276 F. Supp. 75 (1967); no appeal.

Jack A. Walker, A-30492 (April 28, 1966)

Jack A. Walker v. U.S. & Udall, Civil No. 1-66-80, D. Idaho. Judgment for plaintiff, July 3, 1967; rev'd., 409 F. 2d 477 (9th Cir. 1969); no petition.

Estate of Milward Wallace Ward, 82 I.D. 341 (1975)

Alfred Ward, Irene Ward Wise, & Elizabeth Collins v. Kent Frizzell, Acting Secretary of the Interior, et al., Civil No. C75-175, D. Wyo. Dismissed, January 1, 1976.

Wasatch Development Co., et al., A-28674 (May 16, 1963)

Joseph B. Umpleby, et al. v. Stewart L. Udall, Civil No. 8156, D. Colo. Judgment for defendant, 285 F. Supp. 25 (1968); no appeal.

Weardco Construction Corp., 64 I.D. 376 (1957)

Weardco Construction Corp. v. U.S., Civil No. 278-59-PH, S.D. Cal. Judgment for plaintiff, October 26, 1959; satisfaction of judgment entered February 9, 1960.

Estate of Mary Ursula Rock Wellknown, 1 IBIA 83; 78 I.D. 179 (1971)

William T. Shaw, Jr., et al. v. Rogers C. B. Morton, et al., Civil No. 974, D. Mont. Dismissed, July 6, 1973 (opinion); no appeal.

Estate of Wahwersee R. Werqueyah, 5 IBIA 169 (1976)

Mattie Wahwerseer v. Thomas Kleppe, Secretary of Interior, Civil No. CIV-76-0845-E, W.D. Okla. Suit pending.

Lucille S. West, Duncan Miller, et al., A-29242 et al. (February 25, 1963), Duncan Miller, A-29231 (February 5, 1963)

Cecil H. Phillips, et al. v. Stewart L. Udall, Civil No. 847-63. Dismissed on behalf of all except Lucille S. West; judgment for defendant, February 25, 1964; no appeal.

Estate of John P. Whitetail, IA-T-23 (April 17, 1970)

Doris Ann Whitetail Parker, et al. v. John Pappan, et al., Civil No. 70-C-373, D. Okla. Dismissed, July 10, 1973; motion for new trial & reconsideration overruled, August 17, 1973; no appeal.

Estate of Hiemstennie (Maggie) Whiz Abbott, 80 I.D. 617 (1973), 4 IBIA 79 (1975)

Doris Whiz Burkybile v. Alvis Smith, Sr., as Guardian Ad Litem for Zelma, Vernon, Kenneth, Mona & Joseph Smith, Minors, et al., Civil No. C-75-190, E.D. Wash. Suit pending.

Buck Willcoxson, A-27402, A-27403 (December 17, 1956)

Buck Willcoxson v. Douglas Henriques, Civil No. 3596, D. N.M. Motion of plaintiff to dismiss case without prejudice granted, December 10, 1957.

Buck Willcoxson v. Stewart L. Udall, Civil No. 2029-58.

U.S. v. Buck Willcoxson, et al., Civil No. 1492-59.

Buck Willcoxson v. U.S., Civil No. 972-59.

Actions consolidated. Judgment for defendant, plaintiff & defendant, respectively, August 3, 1961; aff'd., 313 F. 2d 884 (1963); cert. denied, 373 U.S. 932 (1963).

William F. Klingensmith, Inc., IBCA-717-5-68, IBCA-734-10-68 (May 4, 1971)

William F. Klingensmith, Inc. v. U.S., Civil No. 1287-71.

William F. Klingensmith, Inc. v. U.S., Civil No. 1288-71.

Actions consolidated and transferred to Ct. of Claims January 24, 1972; Ct. Cl. No. 28-72. Dismissed, November 23, 1973.

David L. Williams, A-29858 (February 12, 1963)

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Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah v. Stewart L. Udall, Civil No. 2595-60. Judgment for defendant, June 5, 1962; remanded, 312 F. 2d 358 (1962).

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6 IBMA 182; 83 I.D. 232 (1976)
6 IBMA 240; 83 I.D. 264 (1976)
6 IBMA 252 (July 13, 1976)
6 IBMA 256; 83 I.D. 294 (1976)
6 IBMA 319; 83 I.D. 350 (1976)
7 IBMA 98; 83 I.D. 579 (1976)
801(j)--------6 IBMA 256; 83 I.D. 294 (1976)
802(a)--------7 IBMA 121; 83 I.D. 690 (1976)
802(d)--------6 IBMA 351; 83 I.D. 409 (1976)
802(h)--------6 IBMA 351; 83 I.D. 409 (1976)
802(1)--------6 IBMA 100; 83 I.D. 108 (1976)
6 IBMA 163; 83 I.D. 225 (1976)
803----------6 IBMA 351; 83 I.D. 409 (1976)
811----------6 IBMA 100; 83 I.D. 108 (1976)
7 IBMA 14; 83 I.D. 425 (1976)
7 IBMA 133; 83 I.D. 695 (1976)
811(a)--------6 IBMA 351; 83 I.D. 409 (1976)
811(d)--------6 IBMA 121; 83 I.D. 175 (1976)
813(g)--------6 IBMA 28; 83 I.D. 59 (1976)
6 IBMA 267 (Aug. 12, 1976)

TITLE 30 (Continued):

sec. 814----------6 IBMA 14; 83 I.D. 37 (1976)
6 IBMA 100; 83 I.D. 108 (1976)
7 IBMA 121; 83 I.D. 690 (1976)
814(a)--------6 IBMA 240; 83 I.D. 264 (1976)
6 IBMA 256; 83 I.D. 294 (1976)
6 IBMA 351; 83 I.D. 409 (1976)
814(b)--------6 IBMA 100; 83 I.D. 108 (1976)
6 IBMA 193; 83 I.D. 236 (1976)
6 IBMA 267 (Aug. 12, 1976)
6 IBMA 294; 83 I.D. 335 (1976)
7 IBMA 109; 83 I.D. 584 (1976)
7 IBMA 121; 83 I.D. 690 (1976)
814(c)--------6 IBMA 100; 83 I.D. 108 (1976)
6 IBMA 193; 83 I.D. 236 (1976)
7 IBMA 224 (Dec. 28, 1976)
814(c)(1)-----6 IBMA 182; 83 I.D. 232 (1976)
6 IBMA 229; 83 I.D. 260 (1976)
6 IBMA 234; 83 I.D. 262 (1976)
7 IBMA 85; 83 I.D. 574 (1976)
7 IBMA 224 (Dec. 28, 1976)
7 IBMA 228 (Dec. 30, 1976)
814(c)(2)-----6 IBMA 182; 83 I.D. 232 (1976)
6 IBMA 229; 83 I.D. 260 (1976)
6 IBMA 234; 83 I.D. 262 (1976)
7 IBMA 224 (Dec. 28, 1976)
7 IBMA 228 (Dec. 30, 1976)
814(g)--------6 IBMA 193; 83 I.D. 236 (1976)
6 IBMA 267 (Aug. 12, 1976)
814(i)--------7 IBMA 14; 83 I.D. 425 (1976)
7 IBMA 133; 83 I.D. 695 (1976)
7 IBMA 152 (Dec. 20, 1976)
815----------6 IBMA 121; 83 I.D. 175 (1976)
6 IBMA 193; 83 I.D. 236 (1976)
6 IBMA 267 (Aug. 12, 1976)
7 IBMA 224 (Dec. 28, 1976)
7 IBMA 228 (Dec. 30, 1976)
815(a)--------6 IBMA 14; 83 I.D. 37 (1976)
6 IBMA 121; 83 I.D. 175 (1976)
815(a)(1)-----6 IBMA 193; 83 I.D. 236 (1976)
7 IBMA 121; 83 I.D. 690 (1976)
815(b)--------6 IBMA 294; 83 I.D. 335 (1976)
819----------6 IBMA 78; 83 I.D. 88 (1976)
6 IBMA 193; 83 I.D. 236 (1976)
6 IBMA 272 (Sept. 8, 1976)
6 IBMA 294; 83 I.D. 335 (1976)
6 IBMA 351; 83 I.D. 409 (1976)
7 IBMA 14; 83 I.D. 425 (1976)
7 IBMA 71; 83 I.D. 551 (1976)
7 IBMA 133; 83 I.D. 695 (1976)
819(a)--------6 IBMA 145 (May 19, 1976)
6 IBMA 150 (May 27, 1976)
6 IBMA 153; 83 I.D. 220 (1976)
6 IBMA 263 (Aug. 2, 1976)
7 IBMA 64; 83 I.D. 526 (1976)
819(a)(1)-----6 IBMA 75 (Mar. 22, 1976)
6 IBMA 86; 83 I.D. 91 (1976)
6 IBMA 212; 83 I.D. 245 (1976)
7 IBMA 98; 83 I.D. 579 (1976)
819(a)(3)-----7 IBMA 14; 83 I.D. 425 (1976)
819(a)(4)-----7 IBMA 14; 83 I.D. 425 (1976)
7 IBMA 133; 83 I.D. 695 (1976)
820----------6 IBMA 351; 83 I.D. 409 (1976)
820(a)--------6 IBMA 71; 83 I.D. 87 (1976)
820(b)--------7 IBMA 121; 83 I.D. 690 (1976)
820(b)(1)-----6 IBMA 28; 83 I.D. 59 (1976)
7 IBMA 172; 83 I.D. 710 (1976)
820(b)(1)(A)--6 IBMA 28; 83 I.D. 59 (1976)
7 IBMA 172; 83 I.D. 710 (1976)
820(b)(2)-----6 IBMA 28; 83 I.D. 59 (1976)
7 IBMA 172; 83 I.D. 710 (1976)
841----------6 IBMA 121; 83 I.D. 175 (1976)
7 IBMA 14; 83 I.D. 425 (1976)
841-846-------7 IBMA 121; 83 I.D. 690 (1976)
841(a)--------6 IBMA 121; 83 I.D. 175 (1976)
6 IBMA 319; 83 I.D. 350 (1976)
7 IBMA 133; 83 I.D. 695 (1976)
841(b)--------7 IBMA 14; 83 I.D. 425 (1976)
842-846-------7 IBMA 14; 83 I.D. 425 (1976)
842(a)--------7 IBMA 14; 83 I.D. 425 (1976)
842(b)--------7 IBMA 14; 83 I.D. 425 (1976)

TITLE 30 (Continued):

sec. 842(b)(1)-----7 IBMA 14; 83 I.D. 425 (1976)
7 IBMA 133; 83 I.D. 695 (1976)
842(b)(2)-----7 IBMA 152 (Dec. 20, 1976)
842(e)--------7 IBMA 14; 83 I.D. 425 (1976)
842(f)--------7 IBMA 14; 83 I.D. 425 (1976)
843(b)(3)-----7 IBMA 121; 83 I.D. 690 (1976)
861(a)--------6 IBMA 100; 83 I.D. 108 (1976)
861(c)--------6 IBMA 100; 83 I.D. 108 (1976)
6 IBMA 121; 83 I.D. 175 (1976)
6 IBMA 163; 83 I.D. 225 (1976)
6 IBMA 343; 83 I.D. 405 (1976)
861(d)--------6 IBMA 100; 83 I.D. 108 (1976)
6 IBMA 121; 83 I.D. 175 (1976)
862----------6 IBMA 100; 83 I.D. 108 (1976)
862(a)--------6 IBMA 100; 83 I.D. 108 (1976)
7 IBMA 71; 83 I.D. 551 (1976)
862(c)--------6 IBMA 100; 83 I.D. 108 (1976)
863(b)--------6 IBMA 329; 83 I.D. 399 (1976)
863(o)--------6 IBMA 163; 83 I.D. 225 (1976)
864(a)--------6 IBMA 294; 83 I.D. 335 (1976)
864(d)--------7 IBMA 14; 83 I.D. 425 (1976)
865(a)(12)(c)-7 IBMA 14; 83 I.D. 425 (1976)
865(o)--------7 IBMA 14; 83 I.D. 425 (1976)
871----------7 IBMA 57; 83 I.D. 515 (1976)
877(1)--------6 IBMA 100; 83 I.D. 108 (1976)
6 IBMA 121; 83 I.D. 175 (1976)
878----------6 IBMA 121; 83 I.D. 175 (1976)
7 IBMA 14; 83 I.D. 425 (1976)
878(i)--------7 IBMA 14; 83 I.D. 425 (1976)
878(k)--------7 IBMA 14; 83 I.D. 425 (1976)
7 IBMA 133; 83 I.D. 695 (1976)
7 IBMA 152 (Dec. 20, 1976)
938----------7 IBMA 121; 83 I.D. 690 (1976)
956----------6 IBMA 100; 83 I.D. 108 (1976)
957----------6 IBMA 71; 83 I.D. 551 (1976)
6 IBMA 100; 83 I.D. 108 (1976)
6 IBMA 163; 83 I.D. 225 (1976)
7 IBMA 14; 83 I.D. 425 (1976)
1001---------27 IBLA 296 (Oct. 26, 1976)
1001 et seq.--24 IBLA 221 (Mar. 24, 1976)
1001-1025-----24 IBLA 44 (Feb. 23, 1976)
24 IBLA 181 (Mar. 16, 1976)
27 IBLA 269 (Oct. 26, 1976)
1001(e)-------24 IBLA 44 (Feb. 23, 1976)
1002---------24 IBLA 181 (Mar. 16, 1976)
24 IBLA 221 (Mar. 24, 1976)
1003---------24 IBLA 44 (Feb. 23, 1976)
24 IBLA 181 (Mar. 16, 1976)
24 IBLA 221 (Mar. 24, 1976)
26 IBLA 178 (Aug. 9, 1976)
26 IBLA 218 (Aug. 17, 1976)
27 IBLA 269 (Oct. 26, 1976)
27 IBLA 365 (Nov. 4, 1976)
27 IBLA 397 (Nov. 5, 1976)
1006---------26 IBLA 218 (Aug. 17, 1976)
27 IBLA 365 (Nov. 4, 1976)
1014---------27 IBLA 4 (Sept. 17, 1976)
1023---------24 IBLA 221 (Mar. 24, 1976)
1958---------28 IBLA 13 (Nov. 8, 1976)

TITLE 31:

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26 IBLA 71 (July 9, 1976)
26 IBLA 232 (Aug. 17, 1976)
27 IBLA 269 (Oct. 26, 1976)

TITLE 33:

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701c-1--------25 IBLA 316 (June 30, 1976)
1251---------24 IBLA 49 (Feb. 23, 1976)
26 IBLA 329 (Sept. 1, 1976)
1314(j)-------24 IBLA 49 (Feb. 23, 1976)
26 IBLA 329 (Sept. 1, 1976)

TITLE 40:

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83 I.D. 43 (1976)

TITLE 42:

sec. 3183----------M-36885; 83 I.D. 589 (1976)
4321----------27 IBLA 46 (Sept. 23, 1976)
M-36885; 83 I.D. 589 (1976)
4321 et seq.--23 IBLA 343 (Jan. 21, 1976)
24 IBLA 49 (Feb. 23, 1976)
24 IBLA 221 (Mar. 24, 1976)
27 IBLA 278; 83 I.D. 518 (1976)
27 IBLA 340; 83 I.D. 542 (1976)
1 OHA 292 (Mar. 15, 1976)
4331----------24 IBLA 76 (Feb. 24, 1976)
24 IBLA 147 (Mar. 10, 1976)
24 IBLA 181 (Mar. 16, 1976)
M-36885; 83 I.D. 589 (1976)
4331(b)(4)----28 IBLA 214; 83 I.D. 666 (1976)
4332----------28 IBLA 214; 83 I.D. 666 (1976)
M-36885; 83 I.D. 589 (1976)
4332(c)-------24 IBLA 159 (Mar. 15, 1976)
4332(2)(C)----23 IBLA 343 (Jan. 21, 1976)
4335----------M-36885; 83 I.D. 589 (1976)
4601----------1 OHA 273 (Jan. 15, 1976)
4601 et seq.--1 OHA 292 (Mar. 15, 1976)
2 OHA 59 (Sept. 22, 1976)
2 OHA 92 (Oct. 4, 1976)
2 OHA 102 (Nov. 22, 1976)
4601(6)-------1 OHA 292 (Mar. 15, 1976)
4601(8)-------1 OHA 273 (Jan. 15, 1976)
4603----------2 OHA 56 (Sept. 16, 1976)
4621----------1 OHA 273 (Jan. 15, 1976)
1 OHA 292 (Mar. 15, 1976)
4622----------2 OHA 1 (Mar. 30, 1976)
2 OHA 18 (June 14, 1976)
2 OHA 24 (July 2, 1976)
2 OHA 35 (Sept. 9, 1976)
4622(a)-------1 OHA 273 (Jan. 15, 1976)
2 OHA 97 (Nov. 22, 1976)
4622(c)-------1 OHA 273 (Jan. 15, 1976)
4623----------1 OHA 292 (Mar. 15, 1976)
2 OHA 35 (Sept. 9, 1976)
2 OHA 56 (Sept. 16, 1976)
4623(a)-------1 OHA 280 (Feb. 11, 1976)
4623(a)(1)(A)-1 OHA 265 (Jan. 12, 1976)
2 OHA 12 (June 3, 1976)
2 OHA 28 (July 7, 1976)
4624----------1 OHA 292 (Mar. 15, 1976)
2 OHA 35 (Sept. 9, 1976)
4624(2)-------2 OHA 97 (Nov. 22, 1976)
4625----------1 OHA 292 (Mar. 15, 1976)
4626(b)-------1 OHA 292 (Mar. 15, 1976)
4633----------2 OHA 97 (Nov. 22, 1976)
4653----------2 OHA 8 (May 11, 1976)
2 OHA 21 (June 14, 1976)
4654----------2 OHA 8 (May 11, 1976)

TITLE 43:

sec. 7----------26 IBLA 194 (Aug. 11, 1976)
9----------26 IBLA 194 (Aug. 11, 1976)
11----------24 IBLA 58 (Feb. 23, 1976)
141----------24 IBLA 320 (Apr. 20, 1976)
154----------27 IBLA 227 (Oct. 12, 1976)
161 et seq.---24 IBLA 308 (Apr. 14, 1976)
26 IBLA 386 (Sept. 15, 1976)
28 IBLA 68 (Nov. 10, 1976)
164----------26 IBLA 137 (Aug. 2, 1976)
28 IBLA 68 (Nov. 10, 1976)
174----------27 IBLA 137; 83 I.D. 364 (1976)
175----------23 IBLA 179 (Jan. 5, 1976)
185----------27 IBLA 33 (Sept. 20, 1976)
189----------27 IBLA 210 (Oct. 6, 1976)
212----------24 IBLA 314 (Apr. 20, 1976)
270----------23 IBLA 179 (Jan. 5, 1976)
28 IBLA 68 (Nov. 10, 1976)
270 et seq.---26 IBLA 386 (Sept. 15, 1976)
270-1---------23 IBLA 346 (Jan. 21, 1976)
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23 IBLA 346 (Jan. 21, 1976)
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23 IBLA 188 (Jan. 5, 1976)
23 IBLA 192 (Jan. 6, 1976)

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sec. 270-1--270-3--23 IBLA 197 (Jan. 6, 1976)
(Continued) 23 IBLA 205 (Jan. 6, 1976)
23 IBLA 207 (Jan. 6, 1976)
23 IBLA 221 (Jan. 8, 1976)
23 IBLA 276 (Jan. 12, 1976)
23 IBLA 280 (Jan. 12, 1976)
23 IBLA 284 (Jan. 12, 1976)
23 IBLA 288 (Jan. 12, 1976)
23 IBLA 292 (Jan. 12, 1976)
23 IBLA 296 (Jan. 12, 1976)
23 IBLA 299 (Jan. 14, 1976)
23 IBLA 304 (Jan. 16, 1976)
23 IBLA 309 (Jan. 16, 1976)
26 IBLA 1 (July 6, 1976)
26 IBLA 235; 83 I.D. 309 (1976)
28 IBLA 83 (Nov. 12, 1976)
28 IBLA 153; 83 I.D. 564 (1976)
270-2---------23 IBLA 188 (Jan. 5, 1976)
270-3---------26 IBLA 235; 83 I.D. 309 (1976)
274----------25 IBLA 234 (June 21, 1976)
274 (note)----27 IBLA 186 (Oct. 4, 1976)
291----------28 IBLA 214; 83 I.D. 666 (1976)
291 et seq.---24 IBLA 308 (Apr. 14, 1976)
291-301-------27 IBLA 256 (Oct. 20, 1976)
292----------24 IBLA 141 (Mar. 8, 1976)
300----------23 IBLA 358; 83 I.D. 23 (1976)
25 IBLA 287; 83 I.D. 249 (1976)
315----------24 IBLA 324; 83 I.D. 185 (1976)
26 IBLA 254 (Aug. 18, 1976)
315 et seq.---24 IBLA 49 (Feb. 23, 1976)
24 IBLA 308 (Apr. 14, 1976)
27 IBLA 278; 83 I.D. 518 (1976)
315a----------24 IBLA 324; 83 I.D. 185 (1976)
27 IBLA 340; 83 I.D. 542 (1976)
315b----------24 IBLA 324; 83 I.D. 185 (1976)
27 IBLA 340; 83 I.D. 542 (1976)
315f----------24 IBLA 308 (Apr. 14, 1976)
26 IBLA 110 (July 26, 1976)
315g----------26 IBLA 313 (Aug. 30, 1976)
26 IBLA 194 (Aug. 11, 1976)
27 IBLA 340; 83 I.D. 542 (1976)
28 IBLA 118 (Nov. 15, 1976)
315g(b)-------24 IBLA 58 (Feb. 23, 1976)
27 IBLA 340; 83 I.D. 542 (1976)
315m----------23 IBLA 374 (Feb. 4, 1976)
24 IBLA 1 (Feb. 4, 1976)
24 IBLA 58 (Feb. 23, 1976)
24 IBLA 124 (Mar. 2, 1976)
24 IBLA 155 (Mar. 15, 1976)
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25 IBLA 277 (June 25, 1976)
25 IBLA 331; 83 I.D. 269 (1976)
28 IBLA 93 (Nov. 15, 1976)
316 et seq.---23 IBLA 197 (Jan. 6, 1976)
23 IBLA 346 (Jan. 21, 1976)
316-316o------23 IBLA 197 (Jan. 6, 1976)
321----------25 IBLA 287; 83 I.D. 249 (1976)
321 et seq.---26 IBLA 41; 83 I.D. 280 (1976)
329----------26 IBLA 41; 83 I.D. 280 (1976)
26 IBLA 366 (Sept. 8, 1976)
333----------26 IBLA 366 (Sept. 8, 1976)
334----------26 IBLA 366 (Sept. 8, 1976)
416----------24 IBLA 108 (Mar. 1, 1976)
24 IBLA 237 (Mar. 24, 1976)
436----------24 IBLA 237 (Mar. 24, 1976)
478----------27 IBLA 278; 83 I.D. 518 (1976)
641----------24 IBLA 314 (Apr. 20, 1976)
25 IBLA 27 (May 5, 1976)
26 IBLA 194 (Aug. 11, 1976)
641 et seq.---24 IBLA 314 (Apr. 20, 1976)
24 IBLA 387 (May 3, 1976)
25 IBLA 27 (May 5, 1976)
27 IBLA 303 (Oct. 26, 1976)
643----------24 IBLA 314 (Apr. 20, 1976)
24 IBLA 387 (May 3, 1976)
25 IBLA 27 (May 5, 1976)
27 IBLA 303 (Oct. 26, 1976)
644----------26 IBLA 194 (Aug. 11, 1976)
682a----------26 IBLA 270 (Aug. 24, 1976)

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24 IBLA 195 (Mar. 19, 1976)
26 IBLA 270 (Aug. 24, 1976)
682(a)-682(c)-28 IBLA 111 (Nov. 15, 1976)
687a----------23 IBLA 190 (Jan. 6, 1976)
24 IBLA 23 (Feb. 11, 1976)
24 IBLA 100 (Mar. 1, 1976)
24 IBLA 240 (Mar. 25, 1976)
25 IBLA 44 (May 13, 1976)
25 IBLA 96 (June 3, 1976)
26 IBLA 123 (July 30, 1976)
27 IBLA 27 (Sept. 17, 1976)
687a et seq.--25 IBLA 44 (May 13, 1976)
687a-1--------24 IBLA 100 (Mar. 1, 1976)
24 IBLA 240 (Mar. 25, 1976)
25 IBLA 96 (June 3, 1976)
28 IBLA 68 (Nov. 10, 1976)
687a-2--------27 IBLA 27 (Sept. 17, 1976)
718----------24 IBLA 85; 83 I.D. 47 (1976)
718 et seq.---24 IBLA 85; 83 I.D. 47 (1976)
732----------24 IBLA 85; 83 I.D. 47 (1976)
26 IBLA 97 (July 19, 1976)
733 et seq.---26 IBLA 144 (Aug. 2, 1976)
733-736-------24 IBLA 85; 83 I.D. 47 (1976)
26 IBLA 97 (July 19, 1976)
737----------26 IBLA 144 (Aug. 2, 1976)
757----------27 IBLA 137; 83 I.D. 364 (1976)
851----------24 IBLA 135 (Mar. 8, 1976)
27 IBLA 137; 83 I.D. 364 (1976)
28 IBLA 100; 83 I.D. 556 (1976)
28 IBLA 124 (Nov. 16, 1976)
852----------24 IBLA 135 (Mar. 8, 1976)
27 IBLA 137; 83 I.D. 364 (1976)
28 IBLA 100; 83 I.D. 556 (1976)
852(a)(1)-----24 IBLA 135 (Mar. 8, 1976)
852(a)(2)-----24 IBLA 135 (Mar. 8, 1976)
852(a)(3)-----24 IBLA 135 (Mar. 8, 1976)
869----------28 IBLA 210 (Dec. 8, 1976)
869 et seq.---28 IBLA 210 (Dec. 8, 1976)
869-2---------28 IBLA 210 (Dec. 8, 1976)
870-871-------27 IBLA 137; 83 I.D. 364 (1976)
871a----------27 IBLA 137; 83 I.D. 364 (1976)
872----------25 IBLA 283 (June 28, 1976)
28 IBLA 118 (Nov. 15, 1976)
891 et seq.---27 IBLA 256 (Oct. 20, 1976)
894-899-------23 IBLA 232; 83 I.D. 1 (1976)
897----------23 IBLA 232; 83 I.D. 1 (1976)
912----------27 IBLA 137; 83 I.D. 364 (1976)
932----------25 IBLA 44 (May 13, 1976)
26 IBLA 281 (Aug. 26, 1976)
27 IBLA 278; 83 I.D. 518 (1976)
934----------27 IBLA 137; 83 I.D. 364 (1976)
934 et seq.---24 IBLA 166; 83 I.D. 80 (1976)
24 IBLA 360; 83 I.D. 194 (1976)
934-939-------27 IBLA 137; 83 I.D. 364 (1976)
936----------27 IBLA 137; 83 I.D. 364 (1976)
940----------27 IBLA 137; 83 I.D. 364 (1976)
946----------24 IBLA 49 (Feb. 23, 1976)
946 et seq.---24 IBLA 49 (Feb. 23, 1976)
956----------27 IBLA 278; 83 I.D. 518 (1976)
959----------25 IBLA 171 (June 14, 1976)
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961----------25 IBLA 171 (June 14, 1976)
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26 IBLA 393; 83 I.D. 332 (1976)
1001---------28 IBLA 79 (Nov. 12, 1976)
1068---------23 IBLA 232; 83 I.D. 1 (1976)
23 IBLA 358; 83 I.D. 23 (1976)
25 IBLA 213 (June 16, 1976)
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28 IBLA 205; 83 I.D. 617 (1976)
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1141 et seq.--24 IBLA 147 (Mar. 10, 1976)
1161-1163-----26 IBLA 378 (Sept. 9, 1976)
28 IBLA 132 (Nov. 19, 1976)
1164----------28 IBLA 132 (Nov. 19, 1976)
1165----------25 IBLA 247 (June 23, 1976)
26 IBLA 41; 83 I.D. 280 (1976)
1171----------24 IBLA 58 (Feb. 23, 1976)
24 IBLA 195 (Mar. 19, 1976)
26 IBLA 127 (July 30, 1976)
26 IBLA 194 (Aug. 11, 1976)
1181a---------26 IBLA 281 (Aug. 26, 1976)
1211----------26 IBLA 378 (Sept. 9, 1976)
1301 et seq.--25 IBLA 96 (June 3, 1976)
1301-1315-----28 IBLA 83 (Nov. 12, 1976)
1335----------27 IBLA 15 (Sept. 17, 1976)
1337----------27 IBLA 15 (Sept. 17, 1976)
1371----------26 IBLA 232 (Aug. 17, 1976)
1374----------27 IBLA 61 (Sept. 27, 1976)
1391 et seq.--26 IBLA 313 (Aug. 30, 1976)
1411 et seq.--24 IBLA 147 (Mar. 10, 1976)
1411-1418-----23 IBLA 280 (Jan. 12, 1976)
26 IBLA 194 (Aug. 11, 1976)
26 IBLA 270 (Aug. 24, 1976)
1414----------24 IBLA 147 (Mar. 10, 1976)
1431----------24 IBLA 5 (Feb. 4, 1976)
1431 et seq.--24 IBLA 190 (Mar. 18, 1976)
26 IBLA 313 (Aug. 30, 1976)
1431-1435-----24 IBLA 5 (Feb. 4, 1976)
24 IBLA 347 (Apr. 23, 1976)
27 IBLA 308 (Oct. 29, 1976)
1457----------24 IBLA 221 (Mar. 24, 1976)
26 IBLA 208 (Aug. 16, 1976)
1464----------M-36883; 83 I.D. 131 (1976)
1601-1624-----1 ANCAB 190; 83 I.D. 619 (1976)
1 ANCAB 281; 83 I.D. 685 (1976)
1603----------28 IBLA 83 (Nov. 12, 1976)
1603(c)-------28 IBLA 83 (Nov. 12, 1976)
1610----------24 IBLA 240 (Mar. 25, 1976)
1617----------23 IBLA 188 (Jan. 5, 1976)
23 IBLA 205 (Jan. 6, 1976)
23 IBLA 276 (Jan. 12, 1976)
23 IBLA 288 (Jan. 12, 1976)
23 IBLA 299 (Jan. 14, 1976)
23 IBLA 304 (Jan. 16, 1976)
23 IBLA 314 (Jan. 16, 1976)
23 IBLA 346 (Jan. 21, 1976)
26 IBLA 1 (July 6, 1976)
28 IBLA 83 (Nov. 12, 1976)

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26 IBLA 144 (Aug. 2, 1976)
1507----------25 IBLA 269 (June 24, 1976)
26 IBLA 246 (Aug. 18, 1976)
26 IBLA 276 (Aug. 24, 1976)
1510----------25 IBLA 269 (June 24, 1976)
26 IBLA 246 (Aug. 18, 1976)
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65(b)---------23 IBLA 232; 83 I.D. 1 (1976)

(B) UNITED STATES STATUTES

33 STAT:

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302----------M-36735 (Supp.);
83 I.D. 346 (1976)
1264----------25 IBLA 283 (June 28, 1976)

34 STAT:

sec. 197----------23 IBLA 188 (Jan. 5, 1976)
23 IBLA 276 (Jan. 12, 1976)
23 IBLA 288 (Jan. 12, 1976)
23 IBLA 299 (Jan. 14, 1976)
23 IBLA 304 (Jan. 16, 1976)
23 IBLA 314 (Jan. 16, 1976)
225----------25 IBLA 311 (June 29, 1976)
26 IBLA 71 (July 9, 1976)
27 IBLA 38 (Sept. 22, 1976)
267----------27 IBLA 137; 83 I.D. 364 (1976)
272----------27 IBLA 137; 83 I.D. 364 (1976)
274----------27 IBLA 137; 83 I.D. 364 (1976)
482----------27 IBLA 137; 83 I.D. 364 (1976)

35 STAT:

sec. 444----------M-36735 (Supp.);
83 I.D. 346 (1976)
647----------27 IBLA 137; 83 I.D. 364 (1976)
781----------M-36735 (Supp.);
83 I.D. 346 (1976)
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83 I.D. 346 (1976)

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sec. 557----------27 IBLA 137; 83 I.D. 364 (1976)
561----------27 IBLA 137; 83 I.D. 364 (1976)
572----------27 IBLA 137; 83 I.D. 364 (1976)
835----------24 IBLA 237 (Mar. 24, 1976)
847----------28 IBLA 286 (Dec. 27, 1976)
856----------5 IBIA 162; 83 I.D. 306 (1976)
861----------5 IBIA 242 (Nov. 5, 1976)
862----------27 IBLA 256 (Oct. 20, 1976)

37 STAT:

sec. 678----------5 IBIA 162; 83 I.D. 306 (1976)

39 STAT:

sec. 218----------25 IBLA 257 (June 23, 1976)
219----------25 IBLA 257 (June 23, 1976)
26 IBLA 281 (Aug. 26, 1976)
862----------24 IBLA 141 (Mar. 8, 1976)

41 STAT:

sec. 437----------24 IBLA 12; 83 I.D. 33 (1976)
25 IBLA 57 (May 20, 1976)
27 IBLA 376 (Nov. 5, 1976)
449----------24 IBLA 135 (Mar. 8, 1976)
450----------25 IBLA 306; 83 I.D. 247 (1976)

42 STAT:

sec. 414----------27 IBLA 137; 83 I.D. 364 (1976)
1017----------25 IBLA 283 (June 28, 1976)

44 STAT:

sec. 464-465-------M-36735 (Supp.);
83 I.D. 346 (1976)

629----------24 IBLA 85; 83 I.D. 47 (1976)

45 STAT:

sec. 200----------M-36735 (Supp.);
83 I.D. 346 (1976)
212----------M-36735 (Supp.);
83 I.D. 346 (1976)

45 STAT (Continued):

sec. 213----------M-36735 (Supp.);
83 I.D. 346 (1976)
1069----------26 IBLA 102 (July 20, 1976)
1091----------23 IBLA 309 (Jan. 16, 1976)

46 STAT:

sec. 373----------24 IBLA 166; 83 I.D. 80 (1976)
24 IBLA 360; 83 I.D. 194 (1976)
1007----------24 IBLA 227 (Mar. 24, 1976)
1008----------24 IBLA 227 (Mar. 24, 1976)

47 STAT:

sec. 1570----------24 IBLA 135 (Mar. 8, 1976)

48 STAT:

sec. 344----------27 IBLA 198 (Oct. 4, 1976)
984----------5 IBIA 72; 83 I.D. 170 (1976)
985----------5 IBIA 20 (Feb. 4, 1976)
5 IBIA 72; 83 I.D. 170 (1976)
987----------5 IBIA 125; 83 I.D. 227 (1976)
1269----------24 IBLA 308 (Apr. 14, 1976)

49 STAT:

sec. 666----------27 IBLA 38 (Sept. 22, 1976)
674----------24 IBLA 227 (Mar. 24, 1976)
677----------24 IBLA 227 (Mar. 24, 1976)
1028----------M-36885; 83 I.D. 589 (1976)
1571----------25 IBLA 316 (June 30, 1976)
1976----------24 IBLA 308 (Apr. 14, 1976)

50 STAT:

sec. 22----------M-36885; 83 I.D. 589 (1976)
874----------25 IBLA 257 (June 23, 1976)
26 IBLA 281 (Aug. 26, 1976)

52 STAT:

sec. 609----------28 IBLA 286 (Dec. 27, 1976)
1215----------25 IBLA 316 (June 30, 1976)

58 STAT:

sec. 890----------M-36885; 83 I.D. 589 (1976)

59 STAT:

sec. 22----------M-36885; 83 I.D. 589 (1976)

60 STAT:

sec. 241----------28 IBLA 13 (Nov. 8, 1976)
968----------5 IBIA 96; 83 I.D. 209 (1976)

62 STAT:

sec. 35----------26 IBLA 144 (Aug. 2, 1976)
269----------M-36735 (Supp.);
83 I.D. 346 (1976)
272----------M-36735 (Supp.);
83 I.D. 346 (1976)

64 STAT:

sec. 170----------25 IBLA 316 (June 30, 1976)
1262----------M-36885; 83 I.D. 589 (1976)

67 STAT:

sec. 589----------5 IBIA 50 (Mar. 19, 1976)

68 STAT:

sec. 583----------24 IBLA 227 (Mar. 24, 1976)
585----------23 IBLA 370 (Jan. 23, 1976)

68 STAT (Continued):

sec. 585---Con.----24 IBLA 227 (Mar. 24, 1976)
25 IBLA 319 (June 30, 1976)
703----------26 IBLA 194 (Aug. 11, 1976)

69 STAT:

sec. 361----------M-36885; 83 I.D. 589 (1976)
367----------28 IBLA 13 (Nov. 8, 1976)
368----------28 IBLA 187; 83 I.D. 609 (1976)
534----------25 IBLA 234 (June 21, 1976)
25 IBLA 283 (June 28, 1976)
27 IBLA 186 (Oct. 4, 1976)
535----------27 IBLA 186 (Oct. 4, 1976)

70 STAT:

sec. 954----------23 IBLA 188 (Jan. 5, 1976)
23 IBLA 197 (Jan. 6, 1976)
23 IBLA 314 (Jan. 16, 1976)
28 IBLA 83 (Nov. 12, 1976)

72 STAT:

sec. 339----------1 ANCAB 190; 83 I.D. 619 (1976)
1 ANCAB 281; 83 I.D. 685 (1976)
23 IBLA 197 (Jan. 6, 1976)
24 IBLA 240 (Mar. 25, 1976)
28 IBLA 83 (Nov. 12, 1976)
340----------1 ANCAB 190; 83 I.D. 619 (1976)
23 IBLA 197 (Jan. 6, 1976)
341----------1 ANCAB 190; 83 I.D. 619 (1976)
342----------1 ANCAB 190; 83 I.D. 619 (1976)
928----------27 IBLA 137; 83 I.D. 364 (1976)
28 IBLA 100; 83 I.D. 556 (1976)

73 STAT:

sec. 141----------28 IBLA 83 (Nov. 12, 1976)
571----------25 IBLA 269 (June 24, 1976)

74 STAT:

sec. 220----------26 IBLA 71 (July 9, 1976)
28 IBLA 214; 83 I.D. 666 (1976)
781----------27 IBLA 376 (Nov. 5, 1976)
782----------24 IBLA 227 (Mar. 24, 1976)
784----------24 IBLA 227 (Mar. 24, 1976)

75 STAT:

sec. 773----------27 IBLA 198 (Oct. 4, 1976)

76 STAT:

sec. 357----------IBCA-1080-10-75;
83 I.D. 43 (1976)
943----------23 IBLA 270 (Jan 23, 1976)
28 IBLA 132 (Nov. 19, 1976)

77 STAT:

sec. 223----------1 ANCAB 190; 83 I.D. 619 (1976)

78 STAT:

sec. 438----------24 IBLA 85; 83 I.D. 47 (1976)

79 STAT:

sec. 574----------M-36885; 83 I.D. 589 (1976)

80 STAT:

sec. 220----------27 IBLA 137; 83 I.D. 364 (1976)

82 STAT:

sec. 870----------26 IBLA 313 (Aug. 30, 1976)
926----------24 IBLA 289 (Apr. 1, 1976)

83 STAT:

sec. 96----------IBCA-1080-10-75;
83 I.D. 43 (1976)
852----------M-36885; 83 I.D. 589 (1976)
854----------M-36885; 83 I.D. 589 (1976)

84 STAT:

sec. 206----------24 IBLA 117 (Mar. 1, 1976)
809----------24 IBLA 23 (Feb. 11, 1976)
1067----------25 IBLA 287; 83 I.D. 249 (1976)
1566----------27 IBLA 269 (Oct. 26, 1976)
1874----------5 IBIA 96; 83 I.D. 209 (1976)
5 IBIA 113; 83 I.D. 216 (1976)
1894----------1 OHA 273 (Jan. 15, 1976)
2 OHA 59 (Sept. 22, 1976)
2 OHA 92 (Oct. 4, 1976)
2 OHA 102 (Nov. 22, 1976)

85 STAT:

sec. 649-651-------26 IBLA 257 (Aug. 18, 1976)
689----------1 ANCAB 190; 83 I.D. 619 (1976)
739----------25 IBLA 1 (May 5, 1976)

88 STAT:

sec. 174----------26 IBLA 71 (July 9, 1976)
28 IBLA 214; 83 I.D. 666 (1976)
2203----------5 IBIA 242 (Nov. 5, 1976)

89 STAT:

sec. 1035----------1 TETON 1; 83 I.D. 680 (1976)
1145----------1 ANCAB 190; 83 I.D. 619 (1976)

90 STAT:

sec. 889----------1 TETON 1; 83 I.D. 680 (1976)
1211----------1 TETON 1; 83 I.D. 680 (1976)

(C) REVISED STATUTES

sec. 2275----------27 IBLA 137; 83 I.D. 364 (1976)
28 IBLA 100; 83 I.D. 556 (1976)
28 IBLA 124 (Nov. 16, 1976)
2276----------27 IBLA 137; 83 I.D. 364 (1976)
28 IBLA 100; 83 I.D. 556 (1976)
28 IBLA 124 (Nov. 16, 1976)
2318----------28 IBLA 187; 83 I.D. 609 (1976)
2319----------28 IBLA 187; 83 I.D. 609 (1976)

sec. 2332----------28 IBLA 246 (Dec. 20, 1976)
2450----------28 IBLA 132 (Nov. 19, 1976)
2450-2456-----26 IBLA 378 (Sept. 9, 1976)
2451----------28 IBLA 132 (Nov. 19, 1976)
2455----------26 IBLA 194 (Aug. 11, 1976)
2456----------28 IBLA 32 (Nov. 19, 1976)
2477----------26 IBLA 281 (Aug. 26, 1976)
3801----------5 IBIA 219 (Oct. 28, 1976)

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ACCOUNTS

REFUNDS

Where a noncompetitive oil and gas lease is canceled for failure of the lessee to make full payment of the first year's rental, the Department may return the rental pursuant to the repayment statute, 43 U.S.C. § 1374 (1970), in appropriate circumstances where the lessee has derived no benefit from the possession of the lease and there are no other factors militating against repayment.

Albert J. Finer, 27 IBLA 61 (Sept. 27, 1976)

ACCRETION

Submerged and filled tidelands passed to the State of Alaska on the date of its admission to the Union, Jan. 3, 1959. Ownership of tidelands subsequently created by avulsive action remains in those persons or entities, including the Federal Government, who held title to the land prior to the avulsive action.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 96 (June 3, 1976)

ACQUIRED LANDS

Patented lands which are subsequently acquired by the United States are not, by mere force of reacquisition, open to disposal under the public land laws. In the absence of specific statutory direction to the contrary, the acquired land is not subject to location under the mining laws.

J. C. Babcock, J. G. Shipp, 25 IBLA 316 (June 30, 1976)

ACT OF APRIL 24, 1820

The Secretary of the Interior does not have authority under the Right-of-Way Oil and Gas Leasing Act of May 21, 1930, 30 U.S.C. § 301 et seq. (1970), to dispose of deposits of oil and gas underlying a railroad right-of-way granted pursuant to the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented under the Act of Apr. 24, 1820, without any reservation for minerals. In such case, title to the mineral estate was included within the grant to the patentee.

Amerada Hess Corporation, 24 IBLA 360 (Apr. 27, 1976) 83 I.D. 194

ACT OF AUGUST 18, 1894

In the absence of pertinent statutory directives or regulatory criteria mandating such action, it is improper for the Bureau of Land Management to reject applications filed by a state under the Act of Mar. 15, 1910, for

ACT OF AUGUST 18, 1894--Continued

temporary withdrawals of lands for proposed development under the Carey Act, on the basis of the Bureau's determination that the Carey Act does not permit acceptance of a temporary withdrawal application: (1) for the establishment of residence and settlement on noncontiguous tracts of land; (2) if the acreage applied for, when added to desert land entry acreage previously patented to the state's Carey Act project proposer, exceeds the maximum 320 acres permitted to be acquired by one person under 43 U.S.C. § 212 (1970); and (3) when the preliminary plan of development submitted by the state fails to provide adequate assurance of water transmission to the proposed project. Under these circumstances, the Bureau should suspend action on the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 24 IBLA 314 (Apr. 20, 1976)

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed state application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the Bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia D. Ellis, 24 IBLA 387 (May 3, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation, stock-driveway, agricultural research or military purposes.

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a state under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 25 IBLA 27 (May 5, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary

ACT OF AUGUST 18, 1894--Continued

withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation purposes.

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a state under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 27 IBLA 303 (Oct. 26, 1976)

ACT OF JUNE 4, 1897

Where land had been conveyed to the United States pursuant to the Act of June 4, 1897, ch. 2, 30 Stat. 11, 36, as a base for forest lieu selection rights, and a purported color of title claim was initiated at a time when the land had not been opened to the operation of the public land laws, the color of title claim is not cognizable as valid under 43 U.S.C. § 1068 (1970).

Estate of John C. Brinton, 25 IBLA 283 (June 28, 1976)

ACT OF FEBRUARY 15, 1901

A Bureau of Land Management decision rejecting an application under the Act of Feb. 15, 1901, for a domestic water pipeline right-of-way will be sustained where it was made in due regard for the public interest.

Hazel E. Kincaid, 25 IBLA 257 (June 23, 1976)

ACT OF MARCH 15, 1910

In the absence of pertinent statutory directives or regulatory criteria mandating such action, it is improper for the Bureau of Land Management to reject applications filed by a state under the Act of Mar. 15, 1910, for temporary withdrawals of lands for proposed development under the Carey Act, on the basis of the Bureau's determination that the Carey Act does not permit acceptance of a temporary withdrawal application: (1) for the establishment of residence and settlement on noncontiguous tracts of land; (2) if the acreage applied for, when added to desert land entry acreage previously patented to the state's Carey Act project proposer, exceeds the maximum 320 acres permitted to be acquired by one person under 43 U.S.C. § 212 (1970); and (3) when the preliminary plan of development submitted by the state fails to provide adequate assurance of water transmission to the proposed project. Under these circumstances,

ACT OF MARCH 15, 1910--Continued

the Bureau should suspend action on the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 24 IBLA 314 (Apr. 20, 1976)

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed state application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the Bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia D. Ellis, 24 IBLA 387 (May 3, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation, stock-driveway, agricultural research or military purposes.

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a state under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 25 IBLA 27 (May 5, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation purposes.

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a state under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the

ACT OF MARCH 15, 1910--Continued

administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 27 IBLA 303 (Oct. 26, 1976)

ACT OF APRIL 23, 1932

The rejection of an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), to open lands in a reclamation withdrawal to mineral location will be affirmed when the applicant fails to submit facts to show the basis for his knowledge or belief that the lands contain valuable mineral deposits. Merely to state the lands contain such deposits is not sufficient.

Joe Ashburn, 27 IBLA 227 (Oct. 12, 1976)

ACT OF SEPTEMBER 18, 1940

Where the purchaser from the railroad of unpatented land believed at the time of his purchase that the land was mineral, and there was physical evidence of its mineral character, or if conditions were such that the purchaser should have known then that the land was excepted from the grant to the railroad, he was not a purchaser in good faith within the "innocent purchaser" proviso of sec. 321(b) of the Transportation Act of 1940.

Southern Pacific Transportation Co., Jay R. Fogal: Lloyd D. Hayes (Intervenor), 23 IBLA 232 (Jan. 9, 1976) 83 I.D. 1

ACT OF JULY 6, 1960

Where land had been conveyed to the United States pursuant to the Act of June 4, 1897, ch. 2, 30 Stat. 11, 36, as a base for forest lieu selection rights, and a purported color of title claim was initiated at a time when the land had not been opened to the operation of the public land laws, the color of title claim is not cognizable as valid under 43 U.S.C. § 1068 (1970).

Estate of John C. Brinton, 25 IBLA 238 (June 28, 1976)

ACT OF OCTOBER 8, 1964

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Minerals which are subject to location under the general mining law on public land outside the Lake Mead Recreation Area are subject to the leasing provisions of the Act of Oct. 8,

ACT OF OCTOBER 8, 1964--Continued

1964, within the Recreation Area. But, minerals which are disposable by sale under the 1947 Materials Act when situated outside the Recreation Area are also subject to such disposal within it.

A decision to reject an application for a mineral lease within the Lake Mead Recreation Area will be sustained in the absence of a showing that the authorized officer acted unreasonably in rejecting the lease for reasons relating to environmental protection.

Rilite Aggregate Company, 26 IBLA 197 (Aug. 11, 1976)

ACT OF DECEMBER 24, 1970

Sec. 4 of the Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands within a known geothermal resource area under regulations formulated by the Secretary of the Interior. Where the Department has promulgated regulations pursuant to this section which provides the Secretary's authorized officer with the reserved right to reject any and all bids submitted for a competitive geothermal lease sale, and that reserved right is publicized in the sale notice, the Government is not obligated to accept any bid which might be considered inadequate.

Getty Oil Company, 27 IBLA 269 (Oct. 26, 1976)

ACT OF DECEMBER 15, 1971

A District Manager's decision denying a grazing permit for 10 domestic horses, based on the fact that such a denial was required for proper range management and for protection of wild horses under the Wild Free-Roaming Horses and Burros Act, 85 Stat. 649-651, will be overruled where evidence presented at a hearing shows that granting the permit will not interfere with BLM's management of the wild horses under the Act.

Chester Baker, 26 IBLA 257 (Aug. 18, 1976)

Where claimants have filed claims to horses on the public lands under sec. 5 of the Wild Horses and Burros Act, 16 U.S.C. § 1335 (Supp. IV, 1974), and pursuant to the regulations in 43 CFR Subpart 4713, and failed to recover them within a reasonable period of time as provided in gathering authorizations issued by the Bureau of Land Management, the Department has no authority to nullify their claims of ownership; the regulations allow more than one authorization to be obtained; claimants in proper circumstances may obtain further authorizations; and upon compliance with legal requirements may gather and claim their horses and burros.

George B. Shaffner et al., 26 IBLA 320 (Aug. 30, 1976)

ADMINISTRATIVE AUTHORITY
(See also Delegation of Authority, Federal Employees and Officers, Secretary of the Interior.)

GENERALLY

Simultaneous oil and gas lease drawing entry cards which are not executed correctly will be rejected. Where an ambiguity is created by an applicant on a drawing entry card, it is not the responsibility of BLM to speculate about applicant's intention and necessarily to resolve the ambiguity in his favor.

Joseph A. Winkler, 24 IBLA 380 (Apr. 29, 1976)

A stipulation requiring an oil and gas lessee to provide a certified statement by an archaeologist concerning the existence of archaeological values on lands to be disturbed by the lessee does not constitute an unlawful delegation of authority because the purpose of the statement is to notify an authorized officer of the Department who retains the authority to determine whether the archaeological data are significant and whether such data are being or may be irrevocably lost or destroyed.

Cecil A. Walker, Alan C. F. Dille', 26 IBLA 71 (July 9, 1976)

The issuance of sodium prospecting permits is discretionary with the Secretary of the Interior, and the Secretary may refuse to issue permits for lands withdrawn for wildlife purposes if the use of the lands for mineral prospecting and development activities would adversely affect the wildlife habitat.

Where the regulations and Departmental and BLM Manuals do not specifically state how disputes between the Fish and Wildlife Service and the Bureau of Land Management over issuing sodium prospecting permits for lands within wildlife refuge areas are to be resolved, but the Department manuals indicate that such decisions are to be made by the Secretary and the BLM Manual directs that such applications be forwarded to the Washington Office, a decision of a State Office rejecting an application for a sodium prospecting permit will be set aside and the case remanded for processing in accordance with the Departmental and BLM Manuals.

Vernal E. Bess, et al., 27 IBLA 4 (Sept. 17, 1976)

The Bureau of Land Management may issue a sodium prospecting permit for lands adjacent to areas withdrawn for wildlife conservation purposes subject to a stipulation which provides that, in the event of discovery of an exploitable sodium deposit, no preference-right lease will be issued unless hydrologic and other environmental analyses indicate that sodium ore can be removed without a significant adverse environmental impact on the wildlife habitat within the withdrawn areas.

David E. Hughes, 27 IBLA 46 (Sept. 23, 1976)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

The Secretary of the Interior has the authority to determine the validity of mining claims upon adequate notice and opportunity for hearing.

United States v. Mine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

A decision by the Bureau of Land Management rejecting a logging road right-of-way application as not in the public interest will be affirmed in the absence of sufficient reasons to the contrary.

Sun Studs, Inc., 27 IBLA 278 (Oct. 26, 1976)
83 I.D. 518

A grazing permittee under sec. 3 of the Taylor Grazing Act does not have an absolute right to a permit renewal even though denial thereof will impair the value of his grazing unit which is pledged as security for a bona fide loan. The Department may refuse to renew such a permit when the public interest requires that the subject land be preserved from unnecessary injury, exchanged, disposed of, or reclassified for alternate public use. Similarly, if the Department may deny renewal outright under the above circumstances, the Department may renew such a permit for a lesser term than previously allowed pending completion of a Management Framework Plan and an Allotment Management Plan which are oriented not only to livestock grazing, but also to multiple use management which includes such concerns as land and water conservation, environmental protection, and other resource management objectives which can be achieved by reclassification of national resource lands and manipulation of grazing activity.

Hat Ranch, Inc., 27 IBLA 340 (Nov. 4, 1976)
83 I.D. 542

ESTOPPEL

The doctrine of collateral estoppel will not bar the administrative contest of the validity of five mining claims which, together with another claim, were the subject of previous condemnation actions for the taking of a temporary exclusive easement over the claims, where the issue of the validity of the individual claims was not actually litigated and it was wholly unnecessary for the Court to adjudicate that issue in rendering its judgment.

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it was not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimant concerning the validity of the claim with the intention that the claimant should act in reliance thereon, with the result that the

ADMINISTRATIVE AUTHORITY--Continued

ESTOPPEL--Continued

claimant was thereby induced to do so, to his ultimate damage.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

Prior recognition of grazing privileges based on licensee's erroneous statement of ownership of base property does not estop the Department from canceling the privileges when it becomes aware of the facts.

Charles Stewart, 26 IBLA 160 (Aug. 4, 1976)

The fact that assessment work has been performed on a mining claim does not estop the Government from determining the validity of a claim by proper proceedings giving adequate notice and an opportunity for a hearing where there are disputed determinative facts. However, where the claim was located after land has been withdrawn from mining, it is proper for the Bureau of Land Management to declare a claim null and void ab initio without a hearing.

Roy R. Cummins, 26 IBLA 223 (Aug. 17, 1976)

ADMINISTRATIVE PRACTICE

Where the record of a Native allotment application at the time of adjudication shows that rejection would be proper, appellant will not be allowed on appeal to submit data which might warrant a different result, absent a clear and convincing showing explaining why the information was not afforded to the Bureau of Land Management when appellant was called upon for such data.

David E. Stevens, 23 IBLA 221 (Jan. 8, 1976)

Where a Native allotment application is properly rejected and on appeal the applicant first submits assertions which, if proved, might qualify her, but fails to make a showing explaining why the data was not timely filed, the rejection of the application will stand.

Marion Stevens, 23 IBLA 280 (Jan. 12, 1976)

Where a desert land applicant appeals from a decision of the Bureau of Land Management holding his application incomplete and, therefore, without priority of filing as against a subsequent application, which was allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for final action on the respective applications so as to avoid premature, piecemeal adjudication.

Nelda E. McAndrew, 24 IBLA 205 (Mar. 22, 1976)

ADMINISTRATIVE PRACTICE--Continued

Although a respondent in a grazing license trespass hearing brought by the Bureau of Land Management has the right to be represented and aided by legal counsel, the Department has no duty or responsibility under the Constitution or the Administrative Procedure Act to provide such counsel for him.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976) 83 I.D. 185

Even if it be established that a controlling regulation had been violated in previous cases, such violation does not afford a valid predicate for further violations of the regulation.

Mary Nan Spear, 25 IBLA 34 (May 5, 1976)

Where the Bureau of Land Management ordered on Mar. 26, 1975, that unofficial copies of the simultaneous oil and gas lease entry card were invalid and to be rejected, that order will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the Jan. 1975 simultaneous filing period.

Eve Reese, 25 IBLA 244 (June 22, 1976)

When the holder of a grazing lease is found to have violated regulations and the terms of his lease because his cattle have trespassed on Federal land, his lease may be canceled when lesser sanctions have proved to be of no effect or when the nature of the violation demands such severity. However, a decision canceling a lease will be set aside where the District Manager relied upon alleged trespasses of which the lessees had no notice and which occurred after a show cause notice had issued, and the case will be remanded for further proceedings.

Rodney Rolfe and Ronald J. Rolfe, 25 IBLA 331 (June 30, 1976) 83 I.D. 269

The right to a hearing on disputed issues of fact involving mining claims includes the right to adequate notice of the grounds upon which a claim's invalidity is asserted.

A Government contest complaint which asserts the invalidity of a claim because of insufficient quantity and quality of the located mineral within the limits of the claim does not put into issue the existence of excess reserves within the limits of a claim.

Where the alleged ground of invalidity of a claim was not charged in the complaint, and was not a matter of contention at the hearing, invalidation of the claim on such ground is improper, despite some evidence to support it, absent an opportunity for the contestee to present evidence on such issue where it appears that there is other pertinent evidence that may be submitted on that issue.

ADMINISTRATIVE PRACTICE--Continued

Where on appeal from a decision sustaining the Government's challenge of a patent application it is determined that the alleged ground of invalidity was one not raised in the complaint or at the hearing, the decision rejecting the patent application will be set aside and the Government will be afforded an opportunity to amend its complaint to embrace the charge. Where the Government does amend its complaint the mineral claimant will be granted the right to an evidentiary hearing on such issue.

United States v. Robert B. McElwaine, 26 IBLA 20 (July 7, 1976)

Prior recognition of grazing privileges based on licensee's erroneous statement of ownership of base property does not estop the Department from canceling the privileges when it becomes aware of the facts.

Charles Stewart, 26 IBLA 160 (Aug. 4, 1976)

ADMINISTRATIVE PROCEDURE
(See also Appeals, Contests and Protests, Hearings, Rules of Practice.)

GENERALLY

Although a respondent in a grazing license trespass hearing brought by the Bureau of Land Management has the right to be represented and aided by legal counsel, the Department has no duty or responsibility under the Constitution or the Administrative Procedure Act to provide such counsel for him.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976) 83 I.D. 185

When deciding whether issuance of a phosphate prospecting permit is appropriate, the Bureau of Land Management is entitled to rely on the reasoned opinion of Geological Survey as its technical expert. A mineral determination made by Geological Survey will not be disturbed in the absence of a clear and definite showing of error. However, when Survey later changes its own determination, the case will be remanded for further consideration.

Philip Shaiman, 25 IBLA 177 (June 14, 1976)

A noncompetitive oil and gas lease applicant's failure to submit the statement of interest of the other parties in interest to the offer is not excused, nor is the Department estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease to the applicant on an offer which was deficient for the same reason.

Leon M. Flanagan, et al., 25 IBLA 269 (June 24, 1976)

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

Where the Bureau of Land Management determines that an Alaska Native allotment application should be rejected because the land was not used and occupied by the applicant, the BLM shall issue a contest complaint pursuant to 43 CFR 4.451 et seq. Upon receiving a timely answer to the complaint, which answer raises a disputed issue of material fact, the Bureau will forward the case file to the Hearings Division, Office of Hearings and Appeals, Department of the Interior, for assignment of an Administrative Law Judge, who will proceed to schedule a hearing at which the applicant may produce evidence to estabish entitlement to his allotment.

Donald Peters, 26 IBLA 235 (Aug. 17, 1976) 83 I.D. 308

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the Administrative Law Judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

United States v. Arizona Mining and Refining Company, Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

Where an attorney files an answer to a contest concerning mining claims on behalf of certain individuals, who, during the pendency of the contest proceedings, transfer their interests in the mining claims to a corporation of which they are major stockholders and Directors, and the attorney represents those individuals and the corporation at the contest hearing, the corporation is bound by the determination reached therein, even though the corporation may not have received actual notice of the contest.

Service of a document upon a person's attorney of record constitutes effective service upon such person.

United States v. Mine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

Where the State of Alaska has applied to select certain land and has been given tentative approval of that selection, and thereafter a conflicting native allotment application is

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

filed which is supported only by meager evidence of use and occupancy, it is error to allow the allotment application and to cancel the State's tentative approval and reject the selection application without notice and an opportunity for a hearing in which the State may participate.

State of Alaska, John Nusunginya, 28 IBLA 83 (Nov. 12, 1976)

An applicant for a private land exchange cannot benefit from the doctrine of equitable estoppel where no agent of the Government who was authorized to consummate the exchange falsely and materially misrepresented to or concealed material facts from appellant concerning the Government's position with respect to the proposed exchange.

Siesta Investments, Inc., 28 IBLA 118 (Nov. 15, 1976)

ADJUDICATION

A federal district court jury verdict in a suit to cancel desert land patents, that the entrymen and their purchaser under an illegal executory contract did not commit fraud against the United States, does not collaterally estop this Department from adjudicating a contest grounded on the illegal executory contract against the purchaser's own entry, because the legal standard applicable in the subsequent contest is different than that in the fraud action--a desert land entry can be subject to cancellation for acts that do not constitute fraud.

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976) 83 I.D. 280

ADMINISTRATIVE LAW JUDGES

Upon appeal from a decision of an Administrative Law Judge, the Board of Land Appeals may make all findings of fact and conclusions of law based upon the record just as though it were making the decision in the first instance.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976) 83 I.D. 185

ADMINISTRATIVE REVIEW

A decision by the Bureau of Land Management to refrain from leasing certain lands for geothermal resources will be upheld when the record shows the decision to be a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decision is shown.

Southern Union Production Company, 27 IBLA 54 (Sept. 23, 1976)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

United States v. Ruth Arcand, et al., 23 IBLA 226 (Jan. 9, 1976)

An applicant under the Color of Title Act, 43 U.S.C. § 1068 (1970), has the burden to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met.

Jeanne Pierresteguy, 23 IBLA 358 (Jan. 23, 1976) 83 I.D. 23

When the Government contests a mining claim, it has assumed the burden of presenting a prima facie case that the claim is invalid; when it has done so, the burden then devolves on the mining claimant to prove by a preponderance of the evidence that the claim is valid.

United States v. Robert W. Beal, 23 IBLA 378 (Feb. 4, 1976)

A determination by a District Manager of the grazing capacity of lands offered for a sec. 15 grazing lease will not be overturned in the absence of a clear showing of error. The burden of proof is upon the party challenging such determination to show that the decision is erroneous or that he has not been dealt with fairly.

Kaser Brothers, 24 IBLA 265 (Mar. 29, 1976)

Applications for phosphate prospecting permits are properly rejected by the Bureau of Land Management upon the basis of a determination by the Geological Survey that the lands applied for contain workable deposits of phosphate thus making the lands subject to the leasing provisions rather than the prospecting provisions of the Mineral Leasing Act. A review of the technical data relied upon by the Geological Survey in making its determination is not required where no evidence is submitted on appeal demonstrating error in that determination.

William F. Martin, 24 IBLA 271 (Mar. 30, 1976)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

When a government mineral examiner testifies that he has examined the exposed workings on a claim without finding sufficient mineral values to support the discovery of a valuable mineral deposit, a prima facie case of lack of discovery has been made.

United States v. John M. Tappan, Jr., et al., 25 IBLA 1 (May 5, 1976)

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified government mining examiner testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable mineral deposit.

United States v. Robert L. Taylor, 25 IBLA 21 (May 5, 1976)

When the Government contests a mining claim on a charge of no discovery it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case has been established.

United States v. Carl Bellamy, 25 IBLA 50 (May 14, 1976)

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. Richard C. Reynders and Carol J. Reynders, 26 IBLA 131 (July 30, 1976)

When the Government contests a mining claim, by practice it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden of going forward then shifts to the claimant to show by a preponderance of the evidence that his claim is valid. Likewise, a millsite claimant has the burden of establishing the validity of his claim by a preponderance of the evidence.

A prima facie case of lack of discovery within a mining claim is established when a Government mineral examiner testified that he has examined the claim and found mineralization insufficient to support a finding of discovery.

United States v. Aloys A. Dietemann and Doris E. L. Dietemann, 26 IBLA 356 (Sept. 8, 1976)

In a government contest of the validity of a mining claim it is the claimants who are the true proponents of a rule or order, namely, that they have complied with the mining laws and have qualified to receive fee title to the land.

United States v. J. R. Osborne, et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

DECISIONS

When the Bureau of Land Management rejects geothermal lease offers on the mistaken basis that the lands embraced within the offers are situated within a particular critical natural area excluded from leasing, but in fact the lease offers are for lands not within that critical natural area but may be in another, the cases must be remanded for further consideration because the decisions fail to disclose a proper basis for rejection of the lease offers.

Kirk Greene, 24 IBLA 113 (Mar. 1, 1976)

When the Bureau of Land Management rejects geothermal lease offers on the basis that the lands embraced within the offers are situated within a critical natural area excluded from leasing, but the record indicates the basis for rejection may be that the lands applied for are associated with historic trails where leasing activity has been approved subject to protective stipulations, the decisions will

ADMINISTRATIVE PROCEDURE--Continued

DECISIONS--Continued

be set aside and the cases remanded for further clarification and consideration by the Bureau to determine whether the lands should be leased subject to protective stipulations.

Christian F. Murer, 24 IBLA 383 (Apr. 29, 1976)

HEARINGS

Where the claimant of a homesite filed his notice of location prior to the segregation of the land by a withdrawal made subject to valid existing rights, and alleges that he initiated the development of improvements sufficient to establish a valid existing right prior to the withdrawal, it is error for the Bureau of Land Management to hold that the location notice was unacceptable for recordation, and the claim may only be canceled following notice to the claimant and an opportunity to demonstrate the establishment of a valid existing homesite claim prior to the withdrawal.

Steven P. Remme, 24 IBLA 23 (Feb. 11, 1976)

Evidence offered on appeal from an initial decision by an Administrative Law Judge after a hearing in a mining contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

A further hearing may be ordered in a mining contest where the record is unsatisfactorily confusing and conflicting on the issue of quantity of minerals to satisfy the discovery test, a request for the rehearing has been made with an offer of proof which tends to show a new hearing might result in a different finding, and there has been no objection to the request.

United States v. George R. Edeline, et al., 24 IBLA 34 (Feb. 17, 1976)

A sodium prospecting permittee who applies for a preference right sodium lease, alleging with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by sec. 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1970), is entitled to a hearing conducted in accordance with sec. 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1970), before his lease application may be finally rejected for failure to prove such a discovery.

Marine Minerals Corporation, 25 IBLA 153 (June 10, 1976)

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing pursuant to the Administrative Procedure Act are required

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

Beverly Trull, 25 IBLA 157 (June 10, 1976)

The regulations do not provide for hearings as a matter of right on trespass violations involving a sec. 15 grazing lessee. For the Board of Land Appeals to exercise its discretion under 43 CFR 4.415 and order a hearing, the appellant must allege facts which, if proved, would entitle him to the relief sought.

Rodney Rolfe and Ronald J. Rolfe, 25 IBLA 331 (June 30, 1976) 83 I.D. 269

Under 43 CFR 2802.1-7(e), which provides that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Following a hearing under 43 CFR 2802.1-7, a decision increasing the charges for use and occupancy of a communication site is in error to the extent that the decision is based upon unspecified evidence not in the record and not made known to the user, and the decision must be set aside.

In a case where a substantial increase is proposed in charges for a communication site under 43 CFR 2802.1-7(e), the required hearing should be conducted in accordance with the accepted concepts of due process.

American Telephone and Telegraph Company, et al., 25 IBLA 341 (June 30, 1976)

A second hearing will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, and where he actually was represented at the hearing and where nothing has been submitted which suggests that another hearing would produce a different result.

United States v. Richard and Beverly Weigel, 26 IBLA 183 (Aug. 10, 1976)

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing pursuant to the Administrative Procedure Act is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

Under 43 CFR 2802.1-7(e), which provides that charges for a right-of-way on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Paradise Oil, Water and Land Development, Inc., 26 IBLA 374 (Sept. 8, 1976)

In a mining claim contest where the evidence of a valuable mineral deposit, submitted by contestee at a hearing, bearing on the validity of a mining claim, has greater probative weight than that offered by the Government, it is proper to find that contestee has preponderated and to dismiss, without prejudice, the complaint alleging no discovery of a valuable mineral deposit.

United States v. Arizona Mining and Refining Company, Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

A request for postponement made more than 10 days prior to a hearing is properly denied where there has been no showing of good cause and proper diligence. A contestee's request for postponement is properly denied when (1) a contestee only seeks postponement in order to pursue an exchange of land for the claims; and (2) the Administrative Law Judge rules that the contestant may seek to dismiss the contest if an exchange is contemplated and the contestant does not wish to abate the contest proceedings.

A request for postponement made at a hearing or within 10 days of a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a party's assertion that it has not had adequate opportunity to prepare a defense where such difficulty could have been anticipated before the request was made.

United States v. Mine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

It is within the discretion of the Board of Land Appeals to grant a request for a hearing on a question of fact. In order to warrant such a hearing, an appellant must at least allege facts which, if proved, would entitle him to the relief sought.

Sun Studs, Inc., 27 IBLA 278 (Oct. 26, 1976)
83 I.D. 518

In a proceeding before the Department to determine the validity of a mining claim, notice and an opportunity for an evidentiary hearing is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

W. A. Todd, A. B. Johnson, 28 IBLA 180 (Dec. 1, 1976)

Where the record does not disclose sufficient facts upon which to make determinations whether a Bureau of Land Management officer who signed an oil and gas lease possessed the authority to do so, when the date of ascertainment of a known geologic structure actually occurred, and whether the United States Geological Survey had sufficient information to make a known geologic structure determination, a hearing may be ordered so that a complete record may be developed.

William T. Alexander (On Remand), 28 IBLA 277 (Dec. 22, 1976)

SUBSTANTIAL EVIDENCE

Where, in an effort to negotiate a compromise settlement of an alleged grazing trespass, a rancher concedes that the trespass occurred to the extent of a specific number of animal unit months of forage, but the proposed settlement is not consummated and the case goes to a hearing on its merits, evidence of the purported admissions made by the party during such negotiations must be excluded as not competent to show either the fact or the extent of the trespass alleged.

Cesar and Robert Siard, 26 IBLA 29 (July 8, 1976)

AIRPORTS

It would not be improper to issue a free use permit to a qualified applicant for land included in, and segregated by, an airport lease application where the airport lease applicant is a governmental entity and it consents to the issuance of the free use permit and such issuance is consistent with the public interest.

Good Roads District No. 1, 25 IBLA 123 (June 7, 1976)

ALASKA

GENERALLY

Any right gained under a notice of location for a trade and manufacturing site or a homesite as required by the Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1970), is personal to the party filing the notice.

A trade and manufacturing site notice of location not supported by actual settlement and occupancy authorized by 43 U.S.C. § 687a

ALASKA--Continued

GENERALLY--Continued

(1970) does not change the status of the public lands.

John W. Eastland, et al., 24 IBLA 240 (Mar. 25, 1976)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

Procedures adopted to implement the Public Land Survey System as provided in Title 43, Chapters 1 and 18, and regulations promulgated thereunder are made applicable to land withdrawals by sec. 13 of ANCSA.

Establishing of "standard parallel" or "correction" lines in compliance with authorized procedure to implement Public Land Survey System is not inconsistent with provisions of sec. 11(a)(1) withdrawal.

Appeal of Eklutna, Inc., 1 ANCAB 165 (Sept. 28, 1976) 83 I.D. 500

GRAZING

Whether or not a lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 et seq. (1970), was properly issued, the land in such a lease is segregated from settlement, location or entry, including the acquisition of rights under the Alaska Native Allotment Act, 43 U.S.C. § 270-1 et seq. (1970), until the lease is canceled of record.

The filing of an Alaska State selection for land in an Alaska grazing lease constitutes a petition for determination under 43 CFR 4131.3-1, and upon favorable determination and cancellation of the lease, the State's rights, including segregation of the land in its favor, relate back to the filing of the selection.

Native use and occupancy of land within an Alaska grazing lease does not preclude the State from selecting the land as "vacant and unappropriated" land within the meaning of the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. notes prec. § 21 (1970). The initiation of use and occupancy subsequent to the segregation of the land in favor of the State gives an applicant no rights to an allotment.

Sandra M. Pestrikoff, 23 IBLA 197 (Jan. 6, 1976)

Under the Alaska Native Allotment Act, no rights are acquired by an applicant who asserted commencement of settlement on land when it was included in a grazing lease issued under the Alaska Grazing Act of 1927, because the land was segregated from adverse appropriation.

Christine Von Scheele, 23 IBLA 346 (Jan. 21, 1976)

ALASKA--Continued

HEADQUARTERS SITES

A notice of location filed under the Alaska settlement law, 43 U.S.C. § 687a (1970), regular on its face, for land which is open to such settlement and location, is acceptable for recordation. If a withdrawal follows the filing of a notice of location, the proper inquiry is into the validity of the claim, i.e., whether the locator has by acts of settlement and improvement established a valid existing right protected from the effect of the withdrawal.

When an appellant from a decision canceling a headquarters site claim does not assert facts which, taken as true, would constitute the initiation of a claim protected from the effect of a withdrawal, the appellant is not entitled to notice and a hearing on the factual issues pertaining to the establishment of a valid existing right.

An asserted headquarters site claim is not protected from the effect of a withdrawal by assertion of improvements: which are not directed toward the establishment of a headquarters on the site; which are made under a prior location on the same land; and for which it appears credit cannot be given because the notice of location was not filed within 90 days of the initiation of such improvements (43 U.S.C. § 687a-1 (1970)).

Mary C. Polen, 24 IBLA 100 (Mar. 1, 1976)

A settlement claim initiated after a state selection application is filed and the land segregated from appropriation creates no rights in the settler.

Any right gained under a notice of location for a trade and manufacturing site or a homesite as required by the Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1970), is personal to the party filing the notice.

John W. Eastland, et al., 24 IBLA 240 (Mar. 25, 1976)

A selection of available land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location. A subsequently filed notice of location for a headquarters site has no effect.

Wilfred S. Wood (On Reconsideration), 25 IBLA 37 (May 6, 1976)

One who files an application to purchase a headquarters site claim has the burden of showing compliance with 43 U.S.C. § 687a (1970), and the applicable regulations in order to establish entitlement to the land.

A headquarters site application is properly rejected where the appellant fails to produce any probative evidence that the land claimed as a headquarters site was used in connection

ALASKA--Continued

HEADQUARTERS SITES--Continued

with a productive industry within the meaning of the headquarters site law.

Gustav O. Wiegner, 26 IBLA 123 (July 30, 1976)

HOMESITES

The filing of a notice of location for a homesite will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator of the homesite fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right excepted from a withdrawal.

Where the claimant of a homesite filed his notice of location prior to the segregation of the land by a withdrawal made subject to valid existing rights, and alleges that he initiated the development of improvements sufficient to establish a valid existing right prior to the withdrawal, it is error for the Bureau of Land Management to hold that the location notice was unacceptable for recordation, and the claim may only be canceled following notice to the claimant and an opportunity to demonstrate the establishment of a valid existing homesite claim prior to the withdrawal.

Steven P. Remme, 24 IBLA 23 (Feb. 11, 1976)

A settlement claim initiated after a state selection application is filed and the land segregated from appropriation creates no rights in the settler.

Any right gained under a notice of location for a trade and manufacturing site or a homesite as required by the Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1970), is personal to the party filing the notice.

John W. Eastland, et al., 24 IBLA 240 (Mar. 25, 1976)

The amendment of a notice of location of a homesite in Alaska may be allowed where the application is filed within the life of the 5-year period granted, and where the amendment embraces lands which the applicant has actually occupied and possessed.

Where the claimant of a homesite filed his notice of location prior to the segregation of the land by a withdrawal made subject to valid existing rights, and he alleges, and the field reports so indicate, that he initiated the development of improvements sufficient to establish a valid existing right prior to the withdrawal, it is error for the State Office to hold that the withdrawal terminated the claimant's rights.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 96 (June 3, 1976)

ALASKA--Continued

HOMESTEADS

In proper circumstances, the issuance of an order to show cause why final proof should not be rejected and entry canceled, is within the discretionary authority of the Bureau of Land Management in adjudicating a homestead application.

Under sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, as amended, 43 U.S.C. § 1165 (1970) an order to show cause why final proof should not be rejected and entry canceled, which order requires the showing of a material fact, is considered a contest or protest.

The showing of "kind of crop planted" and "quantity of crop harvested" are reasonable requirements for final proof submitted for an Alaska homestead.

"Final entry." When an amended homestead final proof has been submitted, the term "final entry" in the proviso in sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, as amended, 43 U.S.C. § 1165 (1970) refers to the submission, to the proper officials, of the amended final proof and required fees.

Under sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, as amended, 43 U.S.C. § 1165 (1970) which requires issuance of a patent 2 years after receipt upon final proof for a homestead entry, a contest against an entry should not be dismissed where the complaint was filed within 2 years following the submission of additional affidavits amending the entryman's deficient final proof, despite the fact that the receipt in connection with the deficient proof had been issued more than 2 years before filing of the complaint and the receipt had never been canceled or a new receipt issued.

United States v. Joe W. Bryant, 25 IBLA 247 (June 23, 1976)

The filing by a qualified applicant of a homestead application to enter unappropriated surveyed lands in Alaska segregates the land covered by the application from appropriation. Such an application will be considered to have created a valid existing right which is protected from the effect of a subsequent withdrawal which is subject to valid existing rights.

Pursuant to 43 CFR 2567.5(a)(1), a homestead entryman in Alaska must establish residence upon the land within 6 months of the date of allowance of the entry or within a maximum period of 12 months, if a 6-month extension of time was requested and granted. These periods do not commence at the time of the filing of the application.

Albert A. Howe, 26 IBLA 386 (Sept. 15, 1976)

The filing by a qualified applicant of an application for an allowed homestead entry of land which is open and available to such entry at the time of filing will operate to segregate the land from subsequent appropriation and invest the applicant with sufficient interest

ALASKA--Continued

HOMESTEADS--Continued

therein to preserve the land from the effect of a subsequent withdrawal which is made subject to valid existing rights.

Richard T. Pope, 27 IBLA 33 (Sept. 20, 1976)

LAND GRANTS AND SELECTIONS

Generally

An appeal will be summarily dismissed when the appellant fails to serve upon all persons required to be served, copies of the Notice of Appeal and other documents filed with the Board in support of its appeal.

43 CFR 4.905, providing for summary dismissal of an appeal for failure to file or serve, upon all persons required to be served, a notice of appeal, statement of reasons, or of standing, merely expresses the inherent authority of the administrative appeals board under 43 CFR Part 4, Subpart G, and, therefore, may be applied to appeals filed prior to the effective date of sec. 4.905, after notice and opportunity to comply with an order of the Board requiring service upon particular persons.

Appeal of Hee-Yea-Lingde Corporation, 1 ANCAB 13 (Dec. 29, 1975)

Sec. 14(h)(5) of the Alaska Native Claims Settlement Act establishes a mandatory deadline for applications for a primary place of residence, which may not be waived in the exercise of Secretarial discretion.

Appeal of Theodora M. Witham, 1 ANCAB 20 (Dec. 29, 1975) 83 I.D. 449

A selection filed by the State of Alaska segregates the land from all appropriations when the State files its application to select. A Native allotment application is properly rejected where applicant fails to show substantial use and occupancy of the land prior to the filing of a State selection application independently for himself or as the head of a family, and not as a minor child occupying or using the land in company with his parents or ancestors.

Daniel Johansen, 23 IBLA 292 (Jan. 12, 1976)

A selection of available land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location. A subsequently filed notice of location for a headquarters site has no effect.

Wilfred S. Wood (On Reconsideration), 25 IBLA 37 (May 6, 1976)

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Generally--Continued

Where an application for an allotment by an Alaskan Native includes land in a State of Alaska selection application that has been tentatively approved to the State, and where the Native alleges occupancy and use from a date prior to the filing of the state selection, the allotment application may be granted, if the facts alleged are ultimately proved and the application is regular in all other respects.

Where the State of Alaska has applied to select certain land and has been given tentative approval of that selection, and thereafter a conflicting native allotment application is filed which is supported only by meager evidence of use and occupancy, it is error to allow the allotment application and to cancel the State's tentative approval and reject the selection application without notice and an opportunity for a hearing in which the State may participate.

State of Alaska, John Nusunginya, 28 IBLA 83 (Nov. 12, 1976)

Applications

The filing of an Alaska State selection for land in an Alaska grazing lease constitutes a petition for determination under 43 CFR 4131.3-1, and upon favorable determination and cancellation of the lease, the State's rights, including segregation of the land in its favor, relate back to the filing of the selection.

Native use and occupancy of land within an Alaska grazing lease does not preclude the State from selecting the land as "vacant and unappropriated" land within the meaning of the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. notes prec. § 21 (1970). The initiation of use and occupancy subsequent to the segregation of the land in favor of the State gives an applicant no rights to an allotment.

Sandra M. Pestrikoff, 23 IBLA 197 (Jan. 6, 1976)

Mental Health Lands

Sec. 4 of ANCSA states:
"(a) All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to sec. 6(g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.
"(b) All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

ALASKA--Continued

LANDS GRANTS AND SELECTIONS--Continued

Mental Health Lands--Continued

"(c) All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission, are hereby extinguished." The effect of the extinguishment of aboriginal claims by sec. 4 of ANCSA, as explained in the Conference Report (S. Rep. No. 92-581), 92d Cong., 1st Sess., 40 (1971) and interpreted by Edwardsen v. Morton, 369 F. Supp. 1359 (D.C. Cir. 1973), necessarily defeats arguments that Mental Health lands remained public lands based on assertions of aboriginal title.

Because Alaska acquired a present right or interest in Mental Health lands immediately upon proper selection of same, and because that interest effectively transfers ownership in the lands to the State, such lands can no longer be considered "public lands" within the meaning of sec. 3(e) and are unavailable for Native village selection under secs. 11(a)(1) and 12(a)(1) of ANCSA.

The authority to select lands under the Alaska Mental Health Enabling Act, while confirmed to the State under sec. 6(k) of the Statehood Act, remains separate and distinct from the authority of the State to select lands as provided in secs. 6(a) and (b) of the Statehood Act.

Lands properly selected under the Alaska Mental Health Enabling Act are not "lands * * * that have been selected * * * by the State under the Alaska Statehood Act" and are not available for selection by Native villages under secs. 11(a)(2) and 12(a)(1) of ANCSA.

Appeal of Seldovia Native Assn., Inc., 1 ANCAB 65 (July 1, 1976) 83 I.D. 461

NATIVE ALLOTMENTS

The requirement of use and occupancy by an applicant under the Alaska Native Allotment Act to the exclusion of all others and not mere intermittent use. The burden to present clear and credible evidence to establish entitlement is upon the applicant.

An applicant under the Alaska Native Allotment Act does not have a due process "right" under the Constitution to a hearing before an Administrative Law Judge on the rejection of her application in whole or in part.

Anuska Tugatuk, 23 IBLA 182 (Jan. 5, 1976)

Where an applicant for an allotment pursuant to the Alaska Native Allotment Act did not occupy the land prior to its inclusion in a

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

national forest, and the land is found not to be chiefly valuable for agricultural or grazing purposes by the authorized officer, the application will be rejected.

Albert Shields, Sr., 23 IBLA 188 (Jan. 5, 1976)

In order to qualify for an allotment an Alaska Native applicant must show substantially continuous use and occupancy of the land for a period of 5 years. When there is no evidence that the applicant used and occupied the land as required, the application must be rejected.

Angeline Gooden, 23 IBLA 192 (Jan. 6, 1976)

An Alaska Native allotment applicant may not use the occupancy of public land by forebears to qualify herself for an allotment, nor does the use and occupancy of public land by a forebear, while the land was open to settlement, create any right that excepts the land from a withdrawal in favor of an applicant who initiated independent use and occupancy subsequent to the withdrawal.

Whether or not a lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 et seq. (1970), was properly issued, the land in such a lease is segregated from settlement, location or entry, including the acquisition of rights under the Alaska Native Allotment Act, 43 U.S.C. § 270-1 et seq. (1970), until the lease is canceled of record.

Native use and occupancy of land within an Alaska grazing lease does not preclude the State from selecting the land as "vacant and unappropriated" land within the meaning of the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. notes prec. § 21 (1970). The initiation of use and occupancy subsequent to the segregation of the land in favor of the State gives an applicant no rights to an allotment.

Sandra M. Pestrikoff, 23 IBLA 197 (Jan. 6, 1976)

Where evidence shows use and occupancy of only a part of the land claimed in a Native allotment application, an allotment may be approved for the smallest legal 40-acre subdivision embracing the area of use, and the application as to the remainder of the land is properly rejected.

Emily B. Hunt, 23 IBLA 205 (Jan. 6, 1976)

An allotment may be granted only when the Native applicant demonstrates actual substantial use and occupation of the land at least potentially exclusive of others, and not merely intermittent use.

A Native allotment applicant is not entitled to a hearing as a matter of right inasmuch as the issuance of an allotment is discretionary

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

with the Secretary of the Interior. However, where there does appear to be a dispute as to material facts raised by conflicting affidavits as to the alleged use of land by conflicting applicants, a further field investigation will be directed in an attempt to resolve the factual uncertainties.

Amelia K. Blastervold, et al., 23 IBLA 207 (Jan. 6, 1976)

Where the record of a Native allotment application at the time of adjudication shows that rejection would be proper, appellant will not be allowed on appeal to submit data which might warrant a different result, absent a clear and convincing showing explaining why the information was not afforded to the Bureau of Land Management when appellant was called upon for such data.

David E. Stevens, 23 IBLA 221 (Jan. 8, 1976)

Where the evidence shows that an applicant for a Native allotment has never occupied the land, the application will be rejected.

Elia Wassillie, 23 IBLA 276 (Jan. 12, 1976)

Where a Native allotment application is properly rejected and on appeal the applicant first submits assertions which, if proved, might qualify her, but fails to make a showing explaining why the data was not timely filed, the rejection of the application will stand.

Marion Stevens, 23 IBLA 280 (Jan. 12, 1976)

Where a Native allotment applicant has had an adequate opportunity to submit credible evidence of substantially continuous use and occupancy of the land at least potentially exclusive of others, but has failed to make such a showing, the application is properly rejected.

A request by a Native allotment applicant for a new field examination will be denied where the applicant was given the opportunity to submit evidence in support of her claim and failed to do so.

A Native allotment applicant is not entitled to a hearing as a matter of right inasmuch as the issuance of an allotment is discretionary with the Secretary of the Interior. A hearing is not appropriate when there is no offer of proof which if established would impel a different legal conclusion.

Kathryn Eluska, 23 IBLA 284 (Jan. 12, 1976)

A Native allotment application for lands within a wildlife range withdrawal is properly rejected where the applicant did not initiate

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

and complete substantial use and occupancy for a 5-year period prior to the effective date of withdrawal or segregation.

The requirement of "substantially continuous use and occupancy of the land for a period of 5 years" applies to all applicants under the Alaska Native Allotment Act, regardless of where the land is situated.

Medina Flynn, 23 IBLA 288 (Jan. 12, 1976)

A selection filed by the State of Alaska segregates the land from all appropriations when the State files its application to select. A Native allotment application is properly rejected where applicant fails to show substantial use and occupancy of the land prior to the filing of a State selection application independently for himself or as the head of a family, and not as a minor child occupying or using the land in company with his parents or ancestors.

The burden to present clear and credible evidence to establish entitlement to a Native allotment is upon the applicant.

Daniel Johansen, 23 IBLA 292 (Jan. 12, 1976)

The requirement of use and occupancy by an applicant under the Alaska Native Allotment Act contemplates possession at least potentially to the exclusion of all others and not mere intermittent use. The burden to present clear and credible evidence to establish entitlement is upon the applicant.

An applicant for a Native allotment does not have a right to a formal hearing before an Administrative Law Judge. Hearings may be held in the discretion of the Secretary of the Interior and will not be held where it is unlikely that further evidence will result in a different conclusion.

John C. Knutsen, 23 IBLA 296 (Jan. 12, 1976)

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from rejection of a Native allotment satisfactory to it why the evidence was not submitted to the Bureau of Land Management within the 60-day period afforded the applicant to submit a further evidence in support of his application. General, rather than specific, allegations of difficulties in travel and communicating in Alaska are not satisfactory showings of the reason for late filing of such evidence.

A field examination of a land claimed for a Native allotment is not sufficiently thorough where the field examiner reveals in his report that only a portion of the parcel was actually examined for evidence of use and occupancy.

Linda L. Walker, 23 IBLA 299 (Jan. 14, 1976)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

An allotment right is personal to one who has fully complied with the law and regulations. Substantially continuous use and occupancy by the Native himself, as an independent citizen or head of a family, is required, and such use must be at least potentially exclusive of others. A minor may initiate such use and occupancy, but use and occupancy by a dependent accompanied by his parents does not qualify. An applicant may not tack on use and occupancy of the land by his ancestors.

To be entitled to an Alaska Native allotment there must be 5 years of substantially continuous use and occupancy, whether or not the land is part of the national forest system or part of the unreserved public domain.

Secretarial Guideline of Oct. 18, 1973, established that an applicant for an Alaska Native allotment must have completed a 5-year period of substantially continuous use and occupancy prior to withdrawal of the land. This guideline is not subject to the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970).

A request for an evidentiary hearing will be denied where there is no dispute involving a material fact, and there is no chance of development of further material facts which would require a different decision.

Stanley P. McCormick, 23 IBLA 304 (Jan. 16, 1976)

Land patented to the State of Alaska pursuant to the Act of Jan. 21, 1929, 45 Stat. 1091, is no longer in Federal ownership and is not available for an Alaska Native allotment.

A BLM State Office decision rejecting an Alaska Native allotment application will be affirmed when the applicant has failed to submit satisfactory proof of substantially continuous use and occupancy of any land.

Mary A. A. Aspinwall, 23 IBLA 309 (Jan. 16, 1976)

An allotment right is personal to one who has fully complied with the law and the regulations. An applicant for a Native allotment on land withdrawn from appropriation and reserved for lighthouse purposes by Executive Order, subject to valid existing rights, must have completed the 5-year period of substantially continuous use and occupancy prior to the withdrawal in order to be eligible for an allotment.

The substantial use and occupancy required by the Native Allotment Act must be achieved by the Native as an independent citizen for himself (or as head of a family) and not as a minor, dependent child occupying or using the land in the company of his parents.

An evidentiary hearing is not required where a decision is based upon the facts as stated by the applicant, there is no dispute as to any material fact, and the sole question presented is a legal issue.

Rachael Topsekok, 23 IBLA 314 (Jan. 16, 1976)

Under the Alaska Native Allotment Act, no rights are acquired by an applicant who asserted commencement of settlement on land when it was included in a grazing lease issued under the Alaska Grazing Act of 1927, because the land was segregated from adverse appropriation.

Christine Von Scheele, 23 IBLA 346 (Jan. 21, 1976)

Where the Bureau of Land Management determines that an Alaska Native allotment application should be rejected because the land was not used and occupied by the applicant, the BLM shall issue a contest complaint pursuant to 43 CFR 4.451 et seq. Upon receiving a timely answer to the complaint, which answer raises a disputed issue of material fact, the Bureau will forward the case file to the Hearings Division, Office of Hearings and Appeals, Department of the Interior, for assignment of an Administrative Law Judge, who will proceed to schedule a hearing at which the applicant may produce evidence to establish entitlement to his allotment.

Donald Peters, 26 IBLA 235 (Aug. 17, 1976)
83 I.D. 308

Where an Alaskan Native alleges that the land described in her Native Allotment Certificate is not the land she settled on and posted, her application for an amendment of the certificate will not be rejected solely because the certificate description is consistent with her application if she offers a reasonable explanation for the mistake and has actually occupied the land she seeks to have included in her certificate.

Edith Jacquot, 27 IBLA 231 (Oct. 12, 1976)

Where an application for an allotment by an Alaskan Native includes land in a State of Alaska selection application that has been tentatively approved to the State, and where the Native alleges occupancy and use from a date prior to the filing of the state selection, the allotment application may be granted, if the facts alleged are ultimately proved and the application is regular in all other respects.

Where the State of Alaska has applied to select certain land and has been given tentative approval of that selection, and thereafter a conflicting native allotment application is filed which is supported only by meager evidence of use and occupancy, it is error to allow the allotment application and to cancel the State's tentative approval and reject the

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

selection application without notice and an opportunity for a hearing in which the State may participate.

State of Alaska, John Nusunginya, 28 IBLA 83 (Nov. 12, 1976)

Where a petition for reconsideration of a previous Board decision applying departmental contest procedures to Alaska Native allotment applications fails to show that the original decision was erroneous in any matter, the original decision will be sustained.

Donald Peters (On Reconsideration), 28 IBLA 153 (Nov. 23, 1976) 83 I.D. 564

POSSESSORY RIGHTS

A decree of foreclosure by a United States District Court, which upholds the validity of a deed of trust executed on a trade and manufacturing site, is not subject to collateral attack in the Department of the Interior. Where the applicant to purchase the site has thus been deprived of any interest in the improvements and the site, he is no longer entitled to purchase the site.

Greater Alaska Development Corporation, 23 IBLA 179 (Jan. 5, 1976)

The filing of a notice of location for a homesite will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator of the homesite fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right excepted from a withdrawal.

Where the claimant of a homesite filed his notice of location prior to the segregation of the land by a withdrawal made subject to valid existing rights, and alleges that he initiated the development of improvements sufficient to establish a valid existing right prior to the withdrawal, it is error for the Bureau of Land Management to hold that the location notice was unacceptable for recordation, and the claim may only be canceled following notice to the claimant and an opportunity to demonstrate the establishment of a valid existing homesite claim prior to the withdrawal.

Steven P. Remme, 24 IBLA 23 (Feb. 11, 1976)

A trade and manufacturing site notice of location not supported by actual settlement and occupancy authorized by 43 U.S.C. § 687a (1970) does not change the status of the public lands.

John W. Eastland, et al., 24 IBLA 240 (Mar. 25, 1976)

ALASKA--Continued

POSSESSORY RIGHTS--Continued

Where the claimant of a homesite filed his notice of location prior to the segregation of the land by a withdrawal made subject to valid existing rights, and he alleges, and the field reports so indicate, that he initiated the development of improvements sufficient to establish a valid existing right prior to the withdrawal, it is error for the State Office to hold that the withdrawal terminated the claimant's rights.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 96 (June 3, 1976)

An Alaska Native Townsite lot applicant is not precluded from settling on and improving a townsite lot until the date of approval of final subdivisional survey except by prior adverse settlement and occupancy; a city does not initiate such an adverse claim by posting lots with "city property" signs without otherwise using or improving the lots.

Ruth B. Sandvik, 26 IBLA 97 (July 19, 1976)

STATEHOOD ACT

A selection application under the Alaska Statehood Act filed in the appropriate Bureau of Land Management office for properly described land segregates the land from all appropriation based upon subsequent application or settlement and location.

A selection application under the Alaska Statehood Act that describes land according to an approved protraction diagram properly describes those lands if the official plat of survey has not been accepted.

John W. Eastland, et al., 24 IBLA 240 (Mar. 25, 1976)

A selection of available land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location. A subsequently filed notice of location for a headquarters site has no effect.

Wilfred S. Wood (On Reconsideration), 25 IBLA 37 (May 6, 1976)

The authority to select lands under the Alaska Mental Health Enabling Act, while confirmed to the State under sec. 6(k) of the Statehood Act, remains separate and distinct from the authority of the State to select lands as provided in secs. 6(a) and (b) of the Statehood Act.

Appeal of Seldovia Native Assn., Inc., 1 ANCAB 65 (July 1, 1976) 83 I.D. 461

ALASKA--Continued

TOWNSITES

A city organized under Alaska State law has standing to appeal from the rejection of its application for townsite deeds to land within its city limits, and the awarding of deeds to occupants of the townsite lots at the time of final subdivisional survey.

To the extent they do not vitiate the purposes or provisions of the Alaska Native townsite law, the provisions of the non-Native Alaska townsite law are to be applied in the disposition of Native townsite lands; in such cases, references to the Act of Mar. 3, 1891, 43 U.S.C. § 732 (1970), in the documents relating to a Native townsite are not pro forma, and the non-Native townsite provisions may be applied.

The date determinative of the rights of occupants of Alaska Native townsite land is the date of final subdivisional survey, not the date of patent; if, at the date of final subdivisional survey, the lots are occupied by non-Natives as well as Natives, the lots will be disposed of under both the non-Native and Native townsite provisions.

The Alaska townsite trustee's lot awards will not be disturbed when the appellant challenging the awards fails to assert facts that might demonstrate error in the application of the Alaska townsite rules: (1) that, in the absence of conflicting occupants on the same parcel, occupancy of a portion of a lot is occupancy of the whole lot; (2) that occupancy may be established by the initiation of settlement if the intent to possess and improve is clearly evidenced on the ground; and (3) that lots will be awarded to those who occupy or are entitled to occupancy of the lots at issue.

City of Klawock v. P. H. Andrew, et al.; City of Klawock v. State of Alaska, Department of Highways, 24 IBLA 85 (Feb. 25, 1976) 83 I.D. 47

An Alaska Native Townsite lot applicant is not precluded from settling on and improving a townsite lot until the date of approval of final subdivisional survey except by prior adverse settlement and occupancy; a city does not initiate such an adverse claim by posting lots with "city property" signs without otherwise using or improving the lots.

Ruth B. Sandvik, 26 IBLA 97 (July 19, 1976)

To the extent that the provisions of the non-Native townsite law do not vitiate the purposes of provisions of the Alaska Native townsite law, the provisions of the non-Native townsite law are to be applied in the disposition of Native townsite lands.

The person or persons who may be awarded a deed to a lot in a townsite are those individuals who occupied or who were entitled to occupancy of such lot on the date of final subdivisional survey.

Where there are conflicting claimants to lots in a Native townsite and the record does not

ALASKA--Continued

TOWNSITES--Continued

clearly reflect who occupied or who was entitled to occupancy of the lots on the date of final subdivisional survey, the Board may, on its own motion, order a hearing.

Leona R. Strang, 26 IBLA 144 (Aug. 2, 1976)

TRADE AND MANUFACTURING SITES

A decree of foreclosure by a United States District Court, which upholds the validity of a deed of trust executed on a trade and manufacturing site, is not subject to collateral attack in the Department of the Interior. Where the applicant to purchase the site has thus been deprived of any interest in the improvements and the site, he is no longer entitled to purchase the site.

Greater Alaska Development Corporation, 23 IBLA 179 (Jan. 5, 1976)

A settlement claim initiated after a state selection application is filed and the land segregated from appropriation creates no rights in the settler.

Any right gained under a notice of location for a trade and manufacturing site or a homesite as required by the Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1970), is personal to the party filing the notice.

A trade and manufacturing site notice of location not supported by actual settlement and occupancy authorized by 43 U.S.C. § 687a (1970) does not change the status of the public lands.

John W. Eastland, et al., 24 IBLA 240 (Mar. 25, 1976)

One who appeals from the rejection of a trade and manufacturing site purchase application and disputes the factual findings and conclusions in the field examiner's report, is not entitled to an opportunity for a hearing on the disputed issues of fact when appellant's assertions of use and improvement, taken as true, do not show use of the land that qualifies her for the right of purchase.

Improvement of land by fencing, and use as horse pasture, constitutes agricultural use which does not qualify as "trade, manufacture, or other productive industry" within the meaning of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970), regardless of the type of business in connection with which the pasturage is desired.

Improvement of land by a road, and use of the land for access to a private inholding do not by themselves qualify the locator to purchase the land as a trade and manufacturing site.

Evelyn M. Bunch, 25 IBLA 44 (May 13, 1976)

ALASKA--Continued

TRADE AND MANUFACTURING SITES--Continued

Where a notice of location is filed for a trade and manufacturing site and such notice is declared unacceptable for recordation because the lands containing the business improvements are tidelands owned by the State of Alaska, the decision must be set aside and the case remanded when the record does not show that there ever was a survey conducted of such lands to determine whether they are, in fact, tidelands owned by the State.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 96 (June 3, 1976)

Sec. 10 of the Act of May 14, 1898, 30 Stat. 413, 43 U.S.C. § 687a (1970), limits the number of trade and manufacturing sites which any individual or corporation may acquire to one, and actions taken pursuant to advice of Bureau of Land Management employees which consolidate a number of applications into one application, thereby possibly avoiding the proscriptions of sec. 10, do not estop the Government from enforcing the limitation of 80-rods of shoreline on navigable waters to the single application.

B.G.R., Inc., 27 IBLA 27 (Sept. 17, 1976)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

GENERALLY

Where an application for an allotment by an Alaskan Native includes land in a State of Alaska selection application that has been tentatively approved to the State, and where the Native alleges occupancy and use from a date prior to the filing of the state selection, the allotment application may be granted, if the facts alleged are ultimately proved and the application is regular in all other respects.

State of Alaska, John Nusunginya, 28 IBLA 83 (Nov. 12, 1976)

ABORIGINAL CLAIMS

Sec. 4 of ANCSA states:
"(a) All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to sec. 6(g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.
"(b) All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.
"(c) All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in

ABORIGINAL CLAIMS--Continued

Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission, are hereby extinguished."
The effect of the extinguishment of aboriginal claims by § 4 of ANCSA, as explained in the Conference Report (S. Rep. No. 92-581), 92d Cong., 1st Sess., 40 (1971) and interpreted by Edwardsen v. Morton, 369 F. Supp. 1359 (D.C. Cir. 1973), necessarily defeats arguments that Mental Health lands remained public lands based on assertions of aboriginal title.

Appeal of Seldovia Native Assn., Inc., 1 ANCAB 65 (July 1, 1976) 83 I.D. 461

In express provisions of the Treaty of Cession and the Organic Act of 1884, and through disclaimers in the Statehood Act, aboriginal title in Alaska received statutory protection in addition to that normally extended on the basis of Native occupancy.

Until Congress acted to extinguish rights of Alaskan Natives to use and occupancy of aboriginal lands, such rights remained as an encumbrance on the fee, and title to land claimed by Alaska Natives, to which use and occupancy might be proved, was void when given.

Prior to ANCSA, the State's interest in its tentatively approved selections was subject to divestment upon proof of Native use and occupancy, and was subject to Congressional resolution of such claims. Unadjudicated claims of aboriginal title remained the only impediment to selection of such lands.

The express terms of secs. 11 and 12 of ANCSA make lands previously TA'd to the State of Alaska available for selection by qualified Native Corporations, indicating the conclusion of Congress that such lands were subject to disposal in settlement of Native claims.

The retroactive extinguishment of aboriginal title, and the resulting validation of State title, mandated by sec. 4(a) of ANCSA, applies to those lands tentatively approved to the State which are located outside Native village withdrawal areas.

Extinguishment of aboriginal title did not vest the State's title to those TA'd lands located within sec. 11(a)(2) withdrawal areas, for Congress clearly conferred on Native village corporations a superior right to select up to 69,120 acres of such lands.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976) 83 I.D. 619

ADMINISTRATIVE PROCEDURE

Generally

Absent another party aligned in interest with the appellant or other reasons justifying the

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

continuance of the appeal, the appeal will be dismissed when the sole appellant before the Board withdraws its appeal.

Appeal of NANA Regional Corporation, Inc., 1 ANCAB 1 (Sept. 11, 1975)

Appeal of Karen Cantu, 1 ANCAB 4 (Oct. 6, 1975)

Appeal of Nicholas J. Laktonen, Sr., 1 ANCAB 7 (Oct. 6, 1975)

Appeal of State of Alaska, 1 ANCAB 10 (Oct. 6, 1975)

Appeal of State of Alaska, 1 ANCAB 32 (May 12, 1976)

Appeal of RCA Alaska Communications, Inc., 1 ANCAB 94 (July 8, 1976)

Appeal of Doyon, Limited, 1 ANCAB 98 (July 9, 1976)

Appeal of Doyon, Limited, 1 ANCAB 101 (July 9, 1976)

Appeal of State of Alaska, Department of Fish and Game, 1 ANCAB 179 (Oct. 21, 1976)

Appeal of the State of Alaska, Department of Fish and Game, 1 ANCAB 182 (Oct. 21, 1976)

43 CFR 4.913(b) provides: "Where an appeal is before the Alaska Native Claims Appeal Board, and no unit of the Department of the Interior is a party to the appeal, no agreement between parties which may require future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved by the Alaska Native Claims Appeal Board, or the Secretary or his delegate." Absent another party aligned in interest with the appellant or other reason from the record file justifying the continuance of the appeal, the appeal will be dismissed pursuant to the terms of the settlement agreement to which appellant is party.

Appeal of Ukpeagvik Inupiat Corporation, 1 ANCAB 185 (Nov. 1, 1976)

Decisions

The Decision of the Bureau of Land Management vacating the previously granted tentative approval and rejecting the land selection application of the State of Alaska must be vacated and remanded for further proceedings when it does not appear that the land selection application by the Native Corporation has been adjudicated.

Appeal of the State of Alaska, 1 ANCAB 281 (Dec. 20, 1976) 83 I.D. 685

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Interim Conveyance

An agreement in settlement of an appeal which requires the Bureau of Land Management to include specified provisions in Interim Conveyances to be issued in the future, but which does not require BLM to amend an Interim Conveyance that has already been issued by the addition of easements thereto, may be approved by the Board without consideration of BLM's authority to amend Interim Conveyances.

Appeal of State of Alaska, 1 ANCAB 51 (June 18, 1976)

Settlement Approval

43 CFR 4.913(b) provides: "Where an appeal is before the Alaska Native Claims Appeal Board, and no unit of the Department of the Interior is a party to the appeal, no agreement between parties which may require future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved by the Alaska Native Claims Appeal Board, or the Secretary or his delegate." When the Bureau of Land Management is the only agency of the U.S. Department of the Interior which is a party to the appeal, and a settlement agreement does not require or provide for future action or forbearance from action by any agency of the U.S. Department of the Interior, an appeal from a Decision of the Bureau of Land Management will be dismissed upon the motion of the appellant based upon a settlement agreement, and no approval of the settlement agreement is required by the Board, or the Secretary or his delegate.

Appeal of RCA Alaska Communications, Inc., 1 ANCAB 94 (July 8, 1976)

Standing

The State of Alaska has standing to appeal a Decision of the Bureau of Land Management to the Alaska Native Claims Appeal Board as a party "who claims a property interest in land affected" by a Decision of the Bureau of Land Management, within the meaning of 43 CFR 4.902, when the BLM Decision vacates the tentative approval previously given to the State's selection and rejects the State's land selection application filed under the Alaska Statehood Act because of a conflict with the provisions of the Alaska Native Claims Settlement Act.

Appeal of the State of Alaska, 1 ANCAB 281 (Dec. 20, 1976) 83 I.D. 685

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD

Administrative Procedure

Decisions

ANCAB is bound by the rules and regulations promulgated by the Secretary of the Interior pursuant to sec. 25 of ANCSA.

Appeal of Eyak Corporation, 1 ANCAB 132 (Sept. 9, 1976) 83 I.D. 484

Appeals

Jurisdiction

Issues arising from GSA's disposal of lands as "surplus property" pursuant to the Federal Property and Administrative Services Act, supra, are not within the jurisdiction of the Board.

Appeal of Ounalashka Corporation, 1 ANCAB 104 (July 13, 1976) 83 I.D. 475

In the absence of evidence that a primary place of business of a Native applicant would also qualify as a primary place of residence within the meaning of sec. 14(h) of ANCSA and the regulations in 43 CFR Part 2650, as amended, 41 FR 14734 (Apr. 7, 1976), neither the Bureau of Land Management nor this Board have jurisdiction to adjudicate the merits of a primary place of business application under sec. 14(c)(1) of ANCSA.

Appeal of Natalie Simeonoff, 1 ANCAB 116 (Aug. 10, 1976)

The Alaska Native Claims Appeal Board does not have jurisdiction to adjudicate the Secretary's authority to withdraw and reserve public lands for a utility and transportation corridor within the meaning of sec. 17(c) of the Alaska Native Claims Settlement Act.

Appeal of Wisenak, Inc., 1 ANCAB 157 (Sept. 15, 1976) 83 I.D. 496

Under 43 CFR, Part 4, 4.1(5) and Subpart J, the Alaska Native Claims Appeal Board has jurisdiction over an appeal by the State of Alaska from an adverse decision of the Bureau of Land Management on a land selection application pursuant to the Alaska Statehood Act when the BLM's adverse decision is based upon a construction of the provisions of the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. IV, 1974), as amended, 89 Stat. 1145 (1976).

Appeal of the State of Alaska, 1 ANCAB 281 (Dec. 20, 1976) 83 I.D. 685

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals-- Continued

Parties

Where the Board's appeal file discloses that persons who may have an interest in the land in dispute have not been named as adverse parties by the Bureau of Land Management and served with a copy of all documents relating to the appeal, the Board will designate such persons necessary parties on whom such service must be made and direct that such persons file an appearance and respond to the pleadings prior to adjudication of the appeal.

Absent another party aligned in interest with the appellant, or other reasons justifying the continuance of the appeal, an appeal will be dismissed when the sole appellant before the Board withdraws its appeal.

Appeal of State of Alaska, 1 ANCAB 51 (June 18, 1976)

Settlement Approval

Where the Bureau of Land Management is a party to an appeal because a decision of the State Director has been appealed, and no other organizational unit of the Department of the Interior is a party, approval of any settlement agreement which may require future action or forbearance by the Department is a prerequisite to binding the Department, and is within the authority of the Board under regulations contained in 43 CFR 4.913(b).

An agreement in settlement of an appeal which requires the Bureau of Land Management to include specified provisions in Interim Conveyances to be issued in the future, but which does not require BLM to amend an Interim Conveyance that has already been issued by the addition of easements thereto, may be approved by the Board without consideration of BLM's authority to amend Interim Conveyances.

Appeal of State of Alaska, 1 ANCAB 51 (June 18, 1976)

43 CFR 4.913(b) provides:
"Where an appeal is before the Alaska Native Claims Appeal Board, and no unit of the Department of the Interior is a party to the appeal, no agreement between parties which may require future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved by the Alaska Native Claims Appeal Board, or the Secretary or his delegate." Absent another party aligned in interest with the appellant or other reason from the record file justifying the continuance of the appeal, the appeal will be dismissed pursuant to the terms of the settlement agreement to which appellant is party.

Appeal of Ukpeagvik Inupiat Corporation, 1 ANCAB 185 (Nov. 1, 1976)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing

The State of Alaska has standing to appeal a Decision of the Bureau of Land Management to the Alaska Native Claims Appeal Board as a party "who claims a property interest in land affected" by a Decision of the Bureau of Land Management, within the meaning of 43 CFR 4.902, when the BLM Decision vacates the tentative approval previously given to the State's selection and rejects the State's land selection application filed under the Alaska Statehood Act because of a conflict with the provisions of the Alaska Native Claims Settlement Act.

Appeal of the State of Alaska, 1 ANCAB 281 (Dec. 20, 1976) 83 I.D. 685

Summary Dismissal

Absent another party aligned in interest with the appellant or other reasons justifying the continuance of the appeal, the appeal will be dismissed when the sole appellant before the Board withdraws its appeal.

Appeal of State of Alaska, 1 ANCAB 32 (May 12, 1976)

Appeal of Doyon, Limited, 1 ANCAB 98 (July 9, 1976)

Appeal of Doyon, Limited, 1 ANCAB 101 (July 9, 1976)

An appeal will be summarily dismissed for lack of diligent prosecution when the appellant fails to file with the Board and to serve upon all persons required to be served, copies of the Notice of Appeal, Statement of Reasons, and other documents required to be filed with the Board in support of the appeal.

Appeal of Natalie Simeonoff, 1 ANCAB 116 (Aug. 10, 1976)

Absent another party aligned with the appellant or other reasons justifying the continuance of the appeal, the appeal will be dismissed when the sole appellant before the Board withdraws its appeal.

Appeal of State of Alaska, Department of Fish and Game, 1 ANCAB 179 (Oct. 21, 1976)

Appeal of the State of Alaska, Department of Fish and Game, 1 ANCAB 182 (Oct. 21, 1976)

CONVEYANCES

Reconveyances

Municipal corporations, organized to provide necessary government services, are beneficiaries

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Reconveyances--Continued

of sec. 14(c) of ANCSA in that they receive title to lands they use and occupy, and to additional lands for community expansion.

The Municipality's interest in lands improved for recognized public purposes is protected by sec. 14(c)(3) of ANCSA because the Municipality occupies the same position with regard to Eklutna as the local government entities envisioned by Congress in enacting such reconveyance provision and the disputed land, while outside Eklutna Village, is within the village withdrawal area and has been improved for a public purpose.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976) 83 I.D. 619

DEFINITIONS

Generally

"Public lands" are defined in sec. 3(e) of the Alaska Native Claims Settlement Act, as follows: "'Public lands' means all Federal lands and interests therein located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation, and (2) land selections of the State of Alaska which have been patented or tentatively approved under sec. 6(g) of the Alaska Statehood Act, as amended (72 Stat. 341, 77 Stat. 223), or identified for selection by the State prior to Jan. 17, 1969." The "except" clause contained in the definition of public lands in sec. 3(e) of ANCSA must be read as an expression of Congressional intent not to include particular lands rather than as an "exception" from lands included in the general definition of public lands.

The definition of public lands in sec. 3(e) cannot be interpreted to mean that all classes of State land in Alaska are necessarily "Federal lands or interests therein" unless such classes of lands are specifically excepted within the definition itself.

Appeal of Seldovia Native Assn., Inc., 1 ANCAB 65 (July 1, 1976) 83 I.D. 461

Land Selections

Lands conveyed to private parties by quitclaim deeds issued by the General Services Administration pursuant to the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. § 471 et seq. (1970), have ceased to be "Federal lands and interests therein;" are not within the definition of "public lands" in sec. 3(e) of ANCSA; and are, therefore, not available for selection.

Appeal of Ounalashka Corporation, 1 ANCAB 104 (July 13, 1976) 83 I.D. 475

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

LAND SELECTIONS

Generally

Selection of lands by Native Village Corporations pursuant to provisions of sec. 12(a) of ANCSA is not permitted outside of lands withdrawn by provisions of sec. 11(a)(1) as they relate to the location of the selecting village.

Failing to select land available within its sec. 11(a)(1) withdrawal, a Native Village Corporation cannot by giving consent and waiver to another Native Village Corporation make said lands available for selection under provision of sec. 12(a) of ANCSA.

Appeal of English Bay Corporation, 1 ANCAB 35 (June 4, 1976) 83 I.D. 454

Where BLM's determination that lands are "property" not suitable for return to the public domain pursuant to the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 472(d) (1970), is not challenged, and the Administrator of the General Services Administration concurs, such determination and concurrence transfer the land from the administrative jurisdiction of the Department of the Interior to that of GSA.

Appeal of Ounalashka Corporation, 1 ANCAB 104 (July 13, 1976) 83 I.D. 475

Where an unlisted Native village qualified under sec. 11(b)(3) of ANCSA is subsequently annexed by a first class or home-rule city, which is not a Native village, such village does not by reason of such annexation become one and the same as the city so as to enable selection of land under 43 CFR 2650.6(a).

Provision of sec. 12(a)(2) of ANCSA and regulations in 43 CFR 2651.4(b) requiring selections to be "contiguous and in reasonably compact tracts," is limited to lands that are otherwise available for selection under ANCSA and has no application so as to make available lands which are prohibited from being selected under provisions of sec. 22(1) of ANCSA.

Appeal of Eyak Corporation, 1 ANCAB 132 (Sept. 9, 1976) 83 I.D. 484

A withdrawal of public lands for a utility and transportation corridor under sec. 17(c) of the Alaska Native Claims Settlement Act, subject to valid existing rights, precludes selection of those lands by a Native group under sec. 14(h) of the Alaska Native Claims Settlement Act.

Appeal of Wisenak, Inc., 1 ANCAB 157 (Sept. 15, 1976) 83 I.D. 496

The provisions of sec. 12(a)(2) of ANCSA and regulations in 43 CFR 2651.4 that lands selected--"be contiguous and in reasonably compact tracts"--are not inconsistent with

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

LAND SELECTIONS--Continued

Generally--Continued

a finding that townships are property withdrawn under sec. 11(a)(1)(B) or (C) though actual physical cornering is prevented due to a township-offset resulting from location of a "standard parallel."

Appeal of Eklutna, Inc., 1 ANCAB 165 (Sept. 28, 1976) 83 I.D. 500

Under 43 CFR, Part 4, 4.1(5) and Subpart J, the Alaska Native Claims Appeal Board has jurisdiction over an appeal by the State of Alaska from an adverse decision of the Bureau of Land Management on a land selection application pursuant to the Alaska Statehood Act when the BLM's adverse decision is based upon a construction of the provisions of the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. IV, 1974), as amended, 89 Stat. 1145 (1976).

The State of Alaska has standing to appeal a Decision of the Bureau of Land Management to the Alaska Native Claims Appeal Board as a party "who claims a property interest in land affected" by a Decision of the Bureau of Land Management, within the meaning of 43 CFR 4.902, when the BLM Decision vacates the tentative approval previously given to the State's selection and rejects the State's land selection application filed under the Alaska Statehood Act because of a conflict with the provisions of the Alaska Native Claims Settlement Act.

The Decision of the Bureau of Land Management vacating the previously granted tentative approval and rejecting the land selection application of the State of Alaska must be vacated and remanded for further proceedings when it does not appear that the land selec has been adjudicated.

Appeal of the State of Alaska, 1 ANCAB 281 (Dec. 20, 1976) 83 I.D. 685

Entrymen

Sec. 22(b) is specific and unambiguous, reflecting the concern of Congress for a class of persons carefully described: i.e., entrymen under the Federal public land laws governing homesteads, headquarters sites, trade and manufacturing sites, and small tract sites.

Sec. 22(b) of ANCSA is not applicable to, and does not protect, the Municipality because having an interest created by the State of Alaska under State law, it is not an entryman under Federal public land laws leading to acquisition of title to homesteads, headquarters sites, trade and manufacturing sites, or small tract sites.

ANCSA protects as "valid existing rights," those rights, whether derived from the State or Federal government, which do not lead to a grant of fee title and which were created

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

LAND SELECTIONS--Continued

Entrymen--Continued

prior to enactment of ANCSA. Rights leading to a fee, which had vested prior to enactment, would not be subject to Congressional disposal and would be excluded from withdrawals for Native selection. Rights of entrymen leading to grant of a fee under Federal public land laws, which had not vested prior to enactment of ANCSA, are treated by ANCSA as if vesting had occurred and are not categorized as "valid existing rights."

The interests described in sec. 14(g) of ANCSA are of a temporary or limited nature, in contrast to those derived from laws leading to a grant of fee title such as the entries protected in sec. 22(b), and, therefore, are not incompatible with Native fee ownership of the land.

The Municipality is not protected under sec. 14(g) of ANCSA because its interest leads to grant of fee title by the State, if the State were able to issue patent; such an interest is incompatible with conveyance to a Native grantee as contemplated by sec. 14(g).

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976) 83 I.D. 619

Primary Place of Residence

In the absence of evidence that a primary place of business of a Native applicant would also qualify as a primary place of residence within the meaning of sec. 14(h) of ANCSA and the regulations in 43 CFR 2650, as amended, 41 FR 14734 (Apr. 7, 1976), neither the Bureau of Land Management nor this Board have jurisdiction to adjudicate the merits of a primary place of business application under sec. 14(c)(1) of ANCSA.

Appeal of Natalie Simeonoff, 1 ANCAB 116 (Aug. 10, 1976)

Proof

The data upon which BLM has relied as the basis for compiling a protraction diagram will be deemed sufficient to determine boundaries of lands affected by the provisions of sec. 22(1) of ANCSA unless controverted by specific showing of error.

Appeal of Eyak Corporation, 1 ANCAB 132 (Sept. 9, 1976) 83 I.D. 484

State Interests

Generally

The Municipality, as grantee of the State, could not acquire greater interests than its grantor and could not, prior to ANCSA, acquire equitable title; accordingly, any protection or

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

LAND SELECTIONS--Continued

State Interests--Continued

Generally--Continued

priority afforded the Municipality must be statutory, conferred by ANCSA.

The Municipality is organized and may be dissolved under State law and presently has the power to exercise governmental functions including the acquisition, management, and disposal of land independent of control by the State. Until revoked or modified by constitutional or legislative amendment, such powers remain in force and render the Municipality and entity separate from the State for purposes of holding third-party interests under ANCSA.

Because the State was not prohibited by sec. 6(g) of the Statehood Act from granting tentatively approved lands to local governments, and neither the Statehood Act nor selection procedures in A.S. 29.18.190 require payment of consideration, the Municipality's interest in the disputed lands does not fail for lack of consideration.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976) 83 I.D. 619

Statehood Act Selections

Generally

Under 43 CFR, Part 4, 4.1(5) and Subpart J, the Alaska Native Claims Appeal Board has jurisdiction over an appeal by the State of Alaska from an adverse decision of the Bureau of Land Management on a land selection application pursuant to the Alaska Statehood Act when the BLM's adverse decision is based upon a construction of the provisions of the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. IV, 1974), as amended, 89 Stat. 1145 (1976).

The State of Alaska has standing to appeal a Decision of the Bureau of Land Management to the Alaska Native Claims Appeal Board as a party "who claims a property interest in land affected" by a Decision of the Bureau of Land Management, within the meaning of 43 CFR 4.902, when the BLM Decision vacates the tentative approval previously given to the State's selection and rejects the State's land selection application filed under the Alaska Statehood Act because of a conflict with the provisions of the Alaska Native Claims Settlement Act.

Appeal of the State of Alaska, 1 ANCAB 281 (Dec. 20, 1976) 83 I.D. 685

Tentative Approvals

Prior to ANCSA, the State's interest in its tentatively approved selections was subject to divestment upon proof of Native use and occupancy, and was subject to Congressional

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

LAND SELECTIONS--Continued

State Interests--Continued

Statehood Act Selections--Continued

Tentative Approvals--Continued

resolution of such claims. Unadjudicated claims of aboriginal title remained the only impediment to selection of such lands.

The express terms of secs. 11 and 12 of ANCSA make lands previously TA'd to the State of Alaska available for selection by qualified Native Corporations, indicating the conclusion of Congress that such lands were subject to disposal in settlement of Native claims.

ANCSA provides in secs. 11(a)(2) and 12(a)(1) that each village may select up to 69,120 acres of its total entitlement from TA'd lands within the area, usually 25 townships, surrounding the village. Such State TA's, already encumbered by aboriginal title to lands on which use and occupancy could be proved, were now subject to a statutory prior right of selection by village corporations; a Native right of selection, based not on aboriginal title, but on Congressional grant in ANCSA.

The retroactive extinguishment of aboriginal title, and the resulting validation of State title, mandated by sec. 4(a) of ANCSA, applies to those lands tentatively approved to the State which are located outside Native village withdrawal areas.

Extinguishment of aboriginal title did not vest the State's title to those TA'd lands located within sec. 11(a)(2) withdrawal areas, for Congress clearly conferred on Native village corporations a superior right to select up to 69,120 acres of such lands.

The State's interest in TA'd lands located within sec. 11(a)(2) withdrawal areas did not vest prior to ANCSA, and did not vest subsequent to ANCSA as to lands properly selected by village corporations within the 3-year period mandated by sec. 12(a).

The State's interest vests in those TA'd lands within sec. 11(a)(2) withdrawals not selected by village corporations within statutory deadlines, for, upon completion of Native selections, the last encumbrance on the State's title is removed.

In withdrawing lands around villages tentatively approved to the State, Congress rejected the State's contention that tentative approval vested title in the State, and in consequence rejected the title the State had relied upon to dispose of TA'd lands to third parties.

Secs. 11(a)(1) and 11(a)(2) of ANCSA direct withdrawals for village selections to be made subject to valid existing rights. The withdrawal of State TA'd lands in sec. 11(a)(2) impliedly recognizes the existence of third-party interests created by the State prior to ANCSA, by prohibiting the creation of such interests subsequent to the withdrawal.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976) 83 I.D. 619

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

LAND SELECTIONS--Continued

Survey

Pursuant to provisions of sec. 13 of ANCSA and regulations in 43 CFR 2650.5, selection of lands shall be in conformance with the United States Survey System. Therefore, those provisions which apply to the rectangular system of surveys as provided in 43 U.S.C. §§ 751-774 (1970), are applicable to selection made under ANCSA.

The smallest legal subdivision authorized pursuant to the rectangular system of surveys of the public lands, 43 U.S.C. §§ 751-774 (1970), is a quarter quarter section.

Unless all of the smallest legal subdivision, i.e., 1/4 1/4 of section, is within the prohibited 2-mile distance from the city boundary, BLM shall not reject said land for selection as being contrary to provisions of sec. 22(1) of ANCSA.

Appeal of Eyak Corporation, 1 ANCAB 132 (Sept. 9, 1976) 83 I.D. 484

Third-Party Interests

The Municipality, as grantee of the State, could not acquire greater interests than its grantor and could not, prior to ANCSA, acquire equitable title; accordingly, any protection or priority afforded the Municipality must be statutory, conferred by ANCSA.

The Municipality is organized and may be dissolved under State law and presently has the power to exercise governmental functions including the acquisition, management, and disposal of land independent of control by the State. Until revoked or modified by constitutional or legislative amendment, such powers remain in force and render the Municipality an entity separate from the State for purposes of holding third-party interests under ANCSA.

Because the State was not prohibited by sec. 6(g) of the Statehood Act from granting tentatively approved lands to local governments, and neither the Statehood Act nor selection procedures in A.S. 29.18.190 require payment of consideration, the Municipality's interest in the disputed lands does not fail for lack of consideration.

Sec. 22(b) of ANCSA is not applicable to, and does not protect, the Municipality because having an interest created by the State of Alaska under State law, it is not an entryman under Federal public land laws leading to acquisition of title to homesteads, headquarters sites, trade and manufacturing sites, or small tract sites.

Secs. 11(a)(1) and 11(a)(2) of ANCSA direct withdrawals for village selections to be made subject to valid existing rights. The withdrawal of State TA'd lands in sec. 11(a)(2) impliedly recognizes the existence of third-party interests created by the State prior to ANCSA, by prohibiting the creation of such interests subsequent to the withdrawal.

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

LAND SELECTIONS--Continued

Third-Party Interests--Continued

The Municipality is not protected under sec. 14(g) of ANCSA because its interest leads to grant of fee title by the State, if the State were able to issue patent; such an interest is incompatible with conveyance to a Native grantee as contemplated by sec. 14(g). Municipal corporations, organized to provide necessary government services, are beneficiaries of sec. 14(c) of ANCSA in that they receive title to lands they use and occupy, and to additional lands for community expansion.

The Municipality's interest in lands improved for recognized public purposes is protected by sec. 14(c)(3) of ANCSA because the Municipality occupies the same position with regard to Eklutna as the local government entities envisioned by Congress in enacting such reconveyance provision and the disputed land, while outside Eklutna Village, is within the village withdrawal area and has been improved for a public purpose.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976) 83 I.D. 619

Valid Existing Rights

Secs. 11(a)(1) and 11(a)(2) of ANCSA direct withdrawals for village selections to be made subject to valid existing rights. The withdrawal of State TA'd lands in sec. 11(a)(2) impliedly recognizes the existence of third-party interests created by the State prior to ANCSA, by prohibiting the creation of such interests subsequent to the withdrawal.

ANCSA protects as "valid existing rights," those rights, whether derived from the State or Federal government, which do not lead to a grant of fee title and which were created prior to enactment of ANCSA. Rights leading to a fee, which had vested prior to enactment, would not be subject to Congressional disposal and would be excluded from withdrawals for Native selection. Rights of entrymen leading to grant of a fee under Federal public land laws, which had not vested prior to enactment of ANCSA, are treated by ANCSA as if vesting had occurred and are not categorized as "valid existing rights." The interests described in sec. 14(g) of ANCSA are of a temporary or limited nature, in contrast to those derived from laws leading to a grant of fee title such as the entries protected in sec. 22(b), and, therefore, are not incompatible with Native fee ownership of the land.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976) 83 I.D. 619

Village Selections

ANCSA provides in secs. 11(a)(2) and 12(a)(1) that each village may select up to 69,120 acres of its total entitlement from TA'd lands within the area, usually 25 townships, surrounding the village. Such State TA's,

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

LAND SELECTIONS--Continued

Village Selections--Continued

already encumbered by aboriginal title to lands on which use and occupancy could be proved, were now subject to a statutory prior right of selection by village corporations; a Native right of selection, based not on aboriginal title, but on Congressional grant in ANSCA.

Eklutna, Inc., is not estopped from selecting the disputed lands by Resolutions 68-9 and 68-10 of the Eklutna Village Council because there is no evidence of any identity of interest or membership between the Council, an unincorporated community association, and Eklutna, Inc., nor is there any indication that the Eklutna Village Council was authorized to bind the Natives of Palmer.

Municipal corporations, organized to provide necessary government services, are beneficiaries of sec. 14(c) of ANCSA in that they receive title to lands they use and occupy, and to additional lands for community expansion.

The Municipality's interest in lands improved for recognized public purposes is protected by sec. 14(c)(3) of ANCSA because the Municipality occupies the same position with regard to Eklutna as the local government entities envisioned by Congress in enacting such reconveyance provision and the disputed land, while outside Eklutna Village, is within the village withdrawal area and has been improved for a public purpose.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976) 83 I.D. 619

Withdrawals

Lands located outside of sec. 11(a)(1) withdrawal area for a Native Village Corporation can only be withdrawn for selection pursuant to provisions of sec. 11(a)(3)(A) of ANCSA.

Appeal of English Bay Corporation, 1 ANCAB 35 (June 4, 1976) 83 I.D. 454

Because Alaska acquired a present right or interest in Mental Health Lands immediately upon proper selection of same, and because that interest effectively transfers ownership in the lands to the State, such lands can no longer be considered "public lands" within the meaning of sec. 3(e) and are unavailable for Native village selection under secs. 11(a)(1) and 12(a)(1) of ANCSA.

Lands properly selected under the Alaska Mental Health Enabling Act are not "lands * * * that have been selected * * * by the State under the Alaska Statehood Act" and are not available for selection by Native villages under secs. 11(a)(2) and 12 (a)(1) of ANCSA.

Appeal of Seldovia Native Assn., Inc., 1 ANCAB 65 (July 1, 1976) 83 I.D. 461

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

LAND SELECTIONS--Continued

Withdrawals--Continued

Lands tentatively approved to the State under the Alaska Statehood Act are withdrawn for village selection by sec. 11(a)(2) of ANCSA. Because sec. 11(a)(2) withdrawals are terminated 3 years from the date of enactment of ANCSA by sec. 22(h)(2), a village land selection filed subsequent to Dec. 18, 1974, for tentatively approved State lands must be rejected.

Appeal of Port Graham Corporation, 1 ANCAB 125 (Sept. 3, 1976) 83 I.D. 481

NATIVE VILLAGE LAND SELECTIONS

Generally

An appeal will be summarily dismissed when the appellant fails to serve upon all persons required to be served, copies of the Notice of Appeal and other documents filed with the Board in support of its appeal.

Appeal of Hee-Yea-Lingde Corporation, 1 ANCAB 13 (Dec. 29, 1975)

Procedural Requirements

Summary Dismissal

Retroactive Application

43 CFR 4.905, providing for summary dismissal of an appeal for failure to file or serve, upon all persons required to be served, a notice of appeal, statement of reasons, or of standing, merely expresses the inherent authority of the administrative appeals board under 43 CFR Part 4, Subpart G, and, therefore, may be applied to appeals filed prior to the effective date of sec. 4.905, after notice and opportunity to comply with an order of the Board requiring service upon particular persons.

Appeal of Hee-Yea-Lingde Corporation, 1 ANCAB 13 (Dec. 29, 1975)

PRIMARY PLACE OF RESIDENCE

Filing Deadline

Waiver

Sec. 14(h)(5) of the Alaska Native Claims Settlement Act establishes a mandatory deadline for applications for a primary place of residence, which may not be waived in the exercise of Secretarial discretion.

Appeal of Theodora M. Witham, 1 ANCAB 20 (Dec. 29, 1975) 83 I.D. 449

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

PRIMARY PLACE OF RESIDENCE--Continued

Intent to Reside without Evidence of Actual Residence is Insufficient to Establish Claim to Land as a Primary Place of Residence

Sec. 14(h)(5) and 43 CFR 2653.0-5 of the Alaska Native Claims Settlement Act require that land applied for as a primary place of residence be occupied by the applicant as a primary place of residence on Aug. 31, 1971. "Primary place of residence" as contemplated by 43 CFR 2653.0-5(d) means a place comprising a primary place of residence of an applicant on Aug. 31, 1971, at which he regularly resides on a permanent or seasonal basis for a substantial period of time.

Appeal of Joe Klimas, 1 ANCAB 26 (Apr. 28, 1976) 83 I.D. 452

SUMMARY DISMISSAL

An appeal will be summarily dismissed when the appellant fails to serve upon all persons required to be served, copies of the Notice of Appeal and other documents filed with the Board in support of its appeal.

Appeal of Hee-Yea-Lingde Corporation, 1 ANCAB 13 (Dec. 29, 1975)

SURVEY

Generally

Procedures adopted to implement the Public Land Survey System as provided in Title 43, Chapters 1 and 18, and regulations promulgated thereunder are made applicable to land withdrawals by sec. 13 of ANCSA.

Establishing of "standard parallel" or "correction" lines in compliance with authorized procedure to implement Public Land Survey System is not inconsistent with provisions of sec. 11(a)(1) withdrawal.

Where townships, which by legal description have a common corner, are not in actual physical contact due solely to the location of a "standard parallel" or "correction" line, the requirement of sec. 11(a)(1)(B) or (C) that townships "corner" will be considered complied with.

Appeal of Eklutna, Inc., 1 ANCAB 165 (Sept. 28, 1976) 83 I.D. 500

Standard Parallel

Where townships, which by legal description have a common corner, are not in actual physical contact due solely to the location of a "standard parallel" or "correction" line, the requirement of sec. 11(a)(1)(B) or (C) that townships "corner" will be considered complied with.

Appeal of Eklutna, Inc., 1 ANCAB 165 (Sept. 28, 1976) 83 I.D. 500

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

WAIVER

Failing to select land available within its sec. 11(a)(1) withdrawal, a Native Village Corporation cannot by giving consent and waiver to another Native Village Corporation make said lands available for selection under provision of sec. 12(a) of ANCSA.

Appeal of English Bay Corporation, 1 ANCAB 35 (June 4, 1976) 83 I.D. 454

WITHDRAWALS

Generally

Selection of lands by Native Village Corporations pursuant to provisions of sec. 12(a) of ANCSA is not permitted outside of lands withdrawn by provisions of sec. 11(a)(1) as they relate to the location of the selecting village.

Appeal of English Bay Corporation, 1 ANCAB 35 (June 4, 1976) 83 I.D. 454

A withdrawal of public lands for a utility and transportation corridor under sec. 17(c) of the Alaska Native Claims Settlement Act, subject to valid existing rights, precludes selection of those lands by a Native group under sec. 14(h) of the Alaska Native Claims Settlement Act.

Appeal of Wisenak, Inc., 1 ANCAB 157 (Sept. 15, 1976) 83 I.D. 496

The express terms of secs. 11 and 12 of ANCSA make lands previously TA'd to the State of Alaska available for selection by qualified Native Corporations, indicating the conclusion of Congress that such lands were subject to disposal in settlement of Native claims.

The State's interest in TA'd lands located within sec. 11(a)(2) withdrawal areas did not vest prior to ANCSA, and did not vest subsequent to ANCSA as to lands properly selected by village corporations within the 3-year period mandated by sec. 12(a).

The State's interest vests in those TA'd lands within sec. 11(a)(2) withdrawals not selected by village corporations within statutory deadlines, for, upon completion of Native selections, the last encumbrance on the State's title is removed.

In withdrawing lands around villages tentatively approved to the State, Congress rejected the State's contention that tentative approval vested title in the State, and in consequence rejected the title the State had relied upon to dispose of TA'd lands to third parties.

Secs. 11(a)(1) and 11(a)(2) of ANCSA direct withdrawals for village selections to be made subject to valid existing rights. The withdrawal of State TA'd lands in sec. 11(a)(2) impliedly recognizes the existence of third-party interests created by the State prior

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

WITHDRAWALS--Continued

Generally--Continued

to ANCSA, by prohibiting the creation of such interests subsequent to the withdrawal.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976) 83 I.D. 619

Cornering

Where townships, which by legal description have a common corner, are not in actual physical contact due solely to the location of a "standard parallel" or "correction" line, the requirement of sec. 11(a)(1)(B) or (C) that townships "corner" will be considered complied with.

The provisions of sec. 12(a)(2) of ANCSA and regulations in 43 CFR 2651.4 that lands selected--"be contiguous and in reasonably compact tracts"--are not inconsistent with a finding that townships are properly withdrawn under sec. 11(a)(1)(B) or (C) though actual physical cornering is prevented due to a township-offset resulting from location of a "standard parallel."

Appeal of Eklutna, Inc., 1 ANCAB 165 (Sept. 28, 1976) 83 I.D. 500

Deficiency

Lands located outside of sec. 11(a)(1) withdrawal area for a Native Village Corporation can only be withdrawn for selection pursuant to provisions of sec. 11(a)(3)(A) of ANCSA.

Appeal of English Bay Corporation, 1 ANCAB 35 (June 4, 1976) 83 I.D. 454

APPEALS

(See also Contracts, Federal Coal Mine Health and Safety Act of 1969, Grazing Permits and Licenses, Indian Probate, Indian Tribes, Rules of Practice, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.)

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from rejection of a Native allotment satisfactory to it why the evidence was not submitted to the Bureau of Land Management within the 60-day period afforded the applicant to submit a further evidence in support of his application. General, rather than specific, allegations of difficulties in travel and communicating in Alaska are not satisfactory showings of the reason for late filing of such evidence.

Linda L. Walker, 23 IBLA 299 (Jan. 14, 1976)

Where high bids, not clearly spurious or irresponsible, tendered at a competitive sale of

APPEALS--Continued

oil and gas leases, are rejected solely on the statement of a field official that the bids are inadequate, and no basis whatever for that conclusion is reflected in the case records, the decision will be set aside and the cases will be remanded for the compilation of a proper record and readjudication of the acceptability of the bids.

Frances J. Richmond, 24 IBLA 303 (Apr. 5, 1976)

A rejection of high bids tendered for two parcels of land offered at a sale of competitive oil and gas leases will be affirmed on appeal where the case file contains memoranda from the U.S. Geological Survey sufficient to establish that the pre-sale minimum evaluation for the two tracts was accomplished by the lease sale committee consisting of an engineer and a geologist and their evaluation was considerably in excess of appellant's bids.

Arkla Exploration Co., 25 IBLA 220 (June 21, 1976)

Statements of reasons for appeal will not be accorded favorable consideration where they do not state with some particularity the exact reason for appeal and the allegations are not supported by evidence.

United States v. Richard and Beverly Weigel, 26 IBLA 183 (Aug. 10, 1976)

Since the Bureau of Land Management has no authority to issue a public land order withdrawing land, such authority existing only in the Secretary, the Under Secretary, and the Assistant Secretaries of the Department of the Interior, recommendations by officers of the Bureau of Land Management relating to withdrawals are not subject to review under the provisions of 43 CFR 4.450-2 or 43 CFR 4.410.

City of Kotzebue, 26 IBLA 264 (Aug. 20, 1976) 83 I.D. 313

Where the transmittal of an appeal to the Board of Land Appeals is accompanied by the request of the State Director that the case be remanded because the special stipulation which accompanied the decision from which the appeal was taken was not the correct one, the case is remanded for further consideration by the Bureau of Land Management, and the Board of Land Appeals does not pass on the reasonableness of either stipulation.

A A Minerals Corp., 27 IBLA 1 (Sept. 17, 1976)

Where an appellant fails to point out some error in a decision or to show that he has wrongly been deprived of some right, and instead limits his statement of reasons for appeal to allegations which are irrelevant

APPEALS--Continued

and immaterial, the appeal will be dismissed as frivolous.

Duncan Miller, 28 IBLA 62 (Nov. 10, 1976)

APPLICATIONS AND ENTRIES

GENERALLY

A decree of foreclosure by a United States District Court, which upholds the validity of a deed of trust executed on a trade and manufacturing site, is not subject to collateral attack in the Department of the Interior. Where the applicant to purchase the site has thus been deprived of any interest in the improvements and the site, he is no longer entitled to purchase the site.

Greater Alaska Development Corporation, 23 IBLA 179 (Jan. 5, 1976)

An application to make homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

Clifford Prisbrey, 24 IBLA 108 (Mar. 1, 1976)

Lewis M. Eslick, 24 IBLA 237 (Mar. 24, 1976)

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted delay in the Postal Service.

John Paul Pratt, 24 IBLA 110 (Mar. 1, 1976)

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed state application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the Bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia D. Ellis, 24 IBLA 387 (May 3, 1976)

A selection of available land filed by the State of Alaska pursuant to its Statehood Act segregates the land from subsequent appropriation based on settlement or location. A subsequently filed notice of location for a headquarters site has no effect.

Wilfred S. Wood (On Reconsideration), 25 IBLA 37 (May 6, 1976)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

It would not be improper to issue a free use permit to a qualified applicant for land included in, and segregated by, an airport lease application where the airport lease applicant is a governmental entity and it consents to the issuance of the free use permit and such issuance is consistent with the public interest.

Good Roads District No. 1, 25 IBLA 123 (June 7, 1976)

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed therefor and any payment submitted therewith will be returned. Should there be a subsequent reclassification as suitable for disposal under the desert land laws, the land will be opened to entry on an equal opportunity basis.

One who submits a desert land entry petition-application for lands which have been classified as being unsuitable for disposal under the desert land laws gains no preference right to such lands should they be reclassified as disposable under the desert land laws. Lands which are reclassified as suitable for disposal will be opened to entry on an equal opportunity basis.

A desert land entry petition-application for land classified as being unsuitable for disposal under the desert land laws may not be held in suspense pending the possible future availability of the land.

Ralph G. Faulkner, et al., 26 IBLA 110 (July 26, 1976)

The execution of an application for patent to a mining claim by an attorney in fact for the claimant, at a time when the claimant himself is both resident of and physically within the land district in which the mining claim is located, is unauthorized, and such an application is invalid. The defect cannot be cured by an amendment signed by the claimant.

Floyd R. Bleak, 26 IBLA 378 (Sept. 9, 1976)

Pursuant to 43 CFR 2567.5(a)(1), a homestead entryman in Alaska must establish residence upon the land within 6 months of the date of allowance of the entry or within a maximum period of 12 months, if a 6-month extension of time was requested and granted. These periods do not commence at the time of the filing of the application.

Albert A. Howe, 26 IBLA 386 (Sept. 15, 1976)

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, is defective and is properly rejected when the applicant fails

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

to accompany its offer with the statement required by the regulation showing the extent of its ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror submits its statement of operating rights with its appeal, the defect may be considered cured with priority of filing as of that time.

Arkansas Western Gas Company, 27 IBLA 207 (Oct. 6, 1976)

AMENDMENTS

An application for the amendment of a patent is properly rejected where the record contains insufficient evidence to show that the entryman entered lands not intended by him as his entry, and where the record fails to show what precaution to avoid error was taken by the entryman at the time of making the original entry, if in fact he intended to enter other lands.

Domenico Tussio, et ux., 24 IBLA 141 (Mar. 8, 1976)

The amendment of a notice of location of a homesite in Alaska may be allowed where the application is filed within the life of the 5-year period granted, and where the amendment embraces lands which the applicant has actually occupied and possessed.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 96 (June 3, 1976)

The execution of an application for patent to a mining claim by an attorney in fact for the claimant, at a time when the claimant himself is both resident of and physically within the land district in which the mining claim is located, is unauthorized, and such an application is invalid. The defect cannot be cured by an amendment signed by the claimant.

Floyd R. Bleak, 26 IBLA 378 (Sept. 9, 1976)

Where an Alaskan Native alleges that the land described in her Native Allotment Certificate is not the land she settled on and posted, her application for an amendment of the certificate will not be rejected solely because the certificate description is consistent with her application if she offers a reasonable explanation for the mistake and has actually occupied the land she seeks to have included in her certificate.

Edith Jacquot, 27 IBLA 231 (Oct. 12, 1976)

APPLICATIONS AND ENTRIES--Continued

FILING

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted delay in the Postal Service.

John Paul Pratt, 24 IBLA 110 (Mar. 1, 1976)

Where a desert land applicant appeals from a decision of the Bureau of Land Management holding his application incomplete and, therefore, without priority of filing as against a subsequent application, which was allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for final action on the respective applications so as to avoid premature, piecemeal adjudication.

Nelda E. McAndrew, 24 IBLA 205 (Mar. 22, 1976)

A selection application under the Alaska Statehood Act filed in the appropriate Bureau of Land Management Office for properly described land segregates the land from all appropriation based upon subsequent application or settlement and location.

A selection application under the Alaska Statehood Act that describes land according to an approved protraction diagram properly describes those lands if the official plat of survey has not been accepted.

John W. Eastland, et al., 24 IBLA 240 (Mar. 25, 1976)

PRIORITY

Where a desert land applicant appeals from a decision of the Bureau of Land Management holding his application incomplete and, therefore, without priority of filing as against a subsequent application, which was allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for final action on the respective applications so as to avoid premature, piecemeal adjudication.

Nelda E. McAndrew, 24 IBLA 205 (Mar. 22, 1976)

VALID EXISTING RIGHTS

The filing by a qualified applicant of a homestead application to enter unappropriated surveyed lands in Alaska segregates the land covered by the application from appropriation. Such an application will be considered to have created a valid existing right which is protected from the effect of a subsequent withdrawal which is subject to valid existing rights.

Albert A. Howe, 26 IBLA 386 (Sept. 15, 1976)

APPLICATIONS AND ENTRIES--Continued

VALID EXISTING RIGHTS--Continued

The filing by a qualified applicant of an application for an allowed homestead entry of land which is open and available to such entry at the time of filing will operate to segregate the land from subsequent appropriation and invest the applicant with sufficient interest therein to preserve the land from the effect of a subsequent withdrawal which is made subject to valid existing rights.

Richard T. Pope, 27 IBLA 33 (Sept. 20, 1976)

VESTED RIGHTS

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

William F. Martin, 24 IBLA 271 (Mar. 30, 1976)

An application for a phosphate prospecting permit is properly rejected when the lands applied for have been classified as containing deposits of oil shale. The lands are thereby subjected to the withdrawal from leasing and other disposal imposed by Executive Order No. 5327. Rejection of the application is required even though the application was filed prior to the oil shale classification and withdrawal.

Thomas E. Gaynor, 24 IBLA 320 (Apr. 20, 1976)

The holder of equitable title has a vested interest; i.e., that interest, acquired by a party when all prerequisites for the acquisition of title have been complied with, which, attaching to the land, deprives Congress of its power to dispose of the property.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976) 83 I.D. 619

APPRAISALS

A notification to a small tract lessee, which was authorized by a memorandum of the Director, Bureau of Land Management, dated Oct. 19, 1955, and approved by the Secretary of the Interior on Nov. 9, 1955, that the lessee could purchase the tract under lease without constructing the improvements required in the option to purchase clause of the lease, if he paid the appraised price shown on the lease within a set time, was an offer to sell the tract by the United States, and exercise of the option by the lessee created a binding

APPRAISALS--Continued

contract. Where issuance of the patent was delayed for years because of the contest of a conflicting mining claim, reappraisal to determine changed value since that time is not permissible because there was a binding contract under special authority.

Abraham Epstein, 24 IBLA 195 (Mar. 19, 1976)

Under 43 CFR 2802.1-7(e), which provides that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Under 602 DM 1.3, standards for evaluating easements granted by the Department are set forth in Interagency Land Acquisition Conference, Uniform Appraisal Standards for Federal Land Acquisitions.

"Fair market value." As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

A comparable lease method of appraisal of microwave communications sites, which involves the comparison of comparable rental data from other leased sites with data from the subject site, is a proper method of determining the fair market value of such site where there is sufficient comparable data available.

Under 43 CFR 2802.1-7(e), a revision of charges for use and occupancy of a microwave communication site should be based upon the physical condition of the right-of-way at the time the user properly commenced occupancy of the site or at time of grant thereof, whichever was earlier, with value adjusted to present value in that condition.

"Highest and best use." As to the improver of a communication site during the term of his grant, a determination that the highest and best use of property is for communications purposes must be based on evidence showing it is so reasonably likely the site would be chosen for use as a communication site in the absence of improvements made by the improver that the suitability of the land for communications purposes would affect its general market value.

"Before and after rule." In reappraisal of a communication site, the before and after rule is applied by determining the market value of the government tract including the site at the time of reappraisal, excluding any enhancement to or diminution from the site project, and subtracting therefrom the market value of the remaining government property interest, including enhancement or diminution from the project.

In the absence of better evidence of comparable leases, the "before and after" method should be employed in appraisals of communication sites under 43 CFR 2802.1-7.

APPRAISALS--Continued

In a case where a substantial increase is proposed in charges for a communication site under 43 CFR 2802.1-7(e), the required hearing should be conducted in accordance with the accepted concepts of due process.

American Telephone and Telegraph Company, et al., 25 IBLA 341 (June 30, 1976)

Under 43 CFR 2802.1-7(e), which provides that charges for a right-of-way on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Paradise Oil, Water and Land Development, Inc., 26 IBLA 374 (Sept. 8, 1976)

Under 43 U.S.C. § 961 (1970) and 43 CFR 2802.1-7(a), an applicant has no right to a hearing in connection with original charges for use and occupancy of a communication site, and a hearing pursuant to a request under 43 CFR 4.415 will not be granted where applicant fails to make specific allegations or offer specific proof to show in what factors a Departmental appraisal is in error.

Without convincing evidence that charges prescribed under 43 U.S.C. § 961 (1970) and 43 CFR 2802.1-7 for use and occupancy of a communication site are excessive, charges properly prescribed by an authorized officer will be sustained on appeal.

Departmental regulation 43 CFR 2802.1-7 contemplates that a charge will be initially established for the entire term of the grant of a communication site right-of-way.

Mountain States Telephone and Telegraph Company, 26 IBLA 393 (Sept. 16, 1976) 83 I.D. 332

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures, and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. Where the lessee fails to do so, the appraisal will stand.

Junction Oil Company, Inc., 28 IBLA 183 (Dec. 6, 1976)

ATTORNEYS

Qualifications to practice before the Department of the Interior are prescribed by regulations. Where an appeal is brought by a person who does not appear to fall within any of the categories of persons authorized to practice, the appeal is subject to dismissal.

W. Duane Kennedy, 24 IBLA 152 (Mar. 10, 1976)

COAL LEASES AND PERMITS

APPLICATIONS

Decisions rejecting coal prospecting permit applications will be affirmed where the decision was made pursuant to and in accordance with Secretarial Order No. 2952 of Feb. 13, 1973.

L. A. Walstrom, Jr., 25 IBLA 186 (June 14, 1976)

COLOR OR CLAIM OF TITLE

GENERALLY

A color of title application for land which has been withdrawn for a stock-driveway prior to any conveyance in a color of title applicant's chain of title is properly rejected as to such land.

Jeanne Pierresteguy, 23 IBLA 358 (Jan. 23, 1976) 83 I.D. 23

A quitclaim deed in which the grantor grants all of his real estate property which he held of record in the county at the time of the deed constitutes color of title to a tract of federal land in the county which the grantor held of record at the time of the deed, despite the lack of specific description of the land in the deed.

Ivie G. Berry, 25 IBLA 213 (June 16, 1976)

A color of title claim cannot be initiated on federal land which has not been opened to the operation of the public land laws.

Where land has been conveyed in the United States pursuant to the Act of June 4, 1897, ch. 2, 30 Stat. 11, 36, as a base for forest lieu selection rights, and a purported color of title claim was initiated at a time when the land had not been opened to the operation of the public land laws, the color of title claim is not cognizable as valid under 43 U.S.C. § 1068 (1970).

A state statute which conclusively presumes that in certain circumstances taxes have been paid does not satisfy the Class 2 Color of Title Act requirement that taxes levied on the land have been paid on the land for a period commencing not later than Jan. 1, 1901, to the date of the application. A tax deed cannot be tacked on to the earlier claim of title. Such a deed commences a new title.

Estate of John C. Brinton, 25 IBLA 283 (June 28, 1976)

The possession and improvement of public land by a color of title applicant in the mistaken belief that he owns it is not a sufficient basis for conveying the land under that act. Color or claim of title must be based upon a document from a source other than the United States, which on its face

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

purports to convey the land applied for to the applicant.

Estate of James J. Lee (Deceased), 26 IBLA 102 (July 20, 1976)

Possession of federal land for the period of a state's statute of limitations, which may create title rights in an adverse possessor to nonfederal land, cannot affect the title of land belonging to the United States. Where there is no other acceptable basis for a belief that a claimant has title other than mere adverse possession under such a state law, there is no claim or color of title recognizable under the Color of Title Act, 43 U.S.C. § 1068 (1970).

A claim under the the Color of Title Act, 43 U.S.C. § 1068 (1970), must be based upon a deed or other document which on its face purports to convey the applicant the land applied for.

Manley Rustin and Betty Rustin, 28 IBLA 205 (Dec. 6, 1976) 83 I.D. 617

APPLICATIONS

An applicant under the Color of Title Act, 43 U.S.C. § 1068 (1970), has the burden to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met.

Jeanne Pierresteguy, 23 IBLA 358 (Jan. 23, 1976) 83 I.D. 23

The failure or refusal of an applicant to submit relevant tax and title data in proper form in support of his application, as required by regulation, is an adequate basis for rejection of the application. However, where the requested documents are tendered on appeal, the case may be remanded to the Bureau of Land Management for adjudication on its merits.

Ivie G. Berry, 25 IBLA 213 (June 16, 1976)

A color of title claim cannot be initiated on federal land which has not been opened to the operation of the public land laws.

Estate of John C. Brinton, 25 IBLA 283 (June 28, 1976)

A color of title claim must be based upon a document from a source other than the United States which purports to convey the land applied for.

An application to purchase public land under the Color of Title Act is properly rejected where the applicant shows that she has held

COLOR OR CLAIM OF TITLE--Continued

APPLICATIONS--Continued

the land for less than 20 years under a conveyance from a grantor who occupied the land for a period which, if added to her possession, would total more than 20 years, but fails to show that the grantor had any reason to believe that he had title to the land other than merely by alleged adverse possession, since mere possession of public land alone cannot be considered as constituting a holding of land under a claim or color of title in good faith as contemplated and required by the Color of Title Act.

Mildred A. Powers, 27 IBLA 213 (Oct. 6, 1976)

DESCRIPTION OF LAND

A color of title application is properly rejected where the applicant has failed to establish how conveyances in her chain of title describing lands different from that described in her application, and different from each other, give color of title to the applied for land for the requisite period of time.

Generally, conveyance which describe only a "possessory interest" in a parcel of land do not constitute a claim or color of title within the contemplation of the Color of Title Act.

Jeanne Pierresteguy, 23 IBLA 358 (Jan. 23, 1976) 83 I.D. 23

GOOD FAITH

A color of title application is properly rejected where the applicant has failed to establish how conveyances in her chain of title describing lands different from that described in her application, and different from each other, give color of title to the applied for land for the requisite period of time.

Generally, conveyances which describe only a "possessory interest" in a parcel of land do not constitute a claim or color of title within the contemplation of the Color of Title Act.

Jeanne Pierresteguy, 23 IBLA 358 (Jan. 23, 1976) 83 I.D. 23

A quiet title decree of a state court does not constitute color of title to a tract of federal land when it was rendered several months after the plaintiff in the quiet title action learned that he did not own the land, although it may serve to demonstrate that the plaintiff is the sole qualified applicant under the other indicia of title upon which the applicant relies.

Ivie G. Berry, 25 IBLA 213 (June 16, 1976)

COLOR OR CLAIM OF TITLE--Continued

GOOD FAITH--Continued

An application to purchase public land under the Color of Title Act is properly rejected where the applicant shows that she has held the land for less than 20 years under a conveyance from a grantor who occupied the land for a period which, if added to her possession, would total more than 20 years, but fails to show that the grantor had any reason to believe that he had title to the land other than merely by alleged adverse possession, since mere possession of public land alone cannot be considered as constituting a holding of land under a claim or color of title in good faith as contemplated and required by the Color of Title Act.

Mildred A. Powers, 27 IBLA 213 (Oct. 6, 1976)

COMMUNICATION SITES

Under 43 CFR 2802.1-7(e), which provides that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Following a hearing under 43 CFR 2802.1-7, a decision increasing the charges for use and occupancy of a communication site is in error to the extent that the decision is based upon unspecified evidence not in the record and not made known to the user, and the decision must be set aside.

Under 602 DM 1.3, standards for evaluating easements granted by the Department are set forth in Interagency Land Acquisition Conference, Uniform Appraisal Standards for Federal Land Acquisitions.

"Fair market value." As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

A comparable lease method of appraisal of microwave communication sites, which involves the comparison of comparable rental data from other leased sites with data from the subject site, is a proper method of determining the fair market value of such site where there is sufficient comparable data available.

Under 43 CFR 2802.1-7(e), a revision of charges for use and occupancy of a microwave communication site should be based upon the physical condition of the right-of-way at the time the user properly commenced occupancy of the site or at the time of grant thereof, whichever was earlier, with value adjusted to present value in that condition.

"Highest and best use." As to the improver of a communication site during the term of his grant, a determination that the highest and best use of property is for communications purposes must be based on evidence showing

COMMUNICATION SITES--Continued

it is so reasonably likely the site would be chosen for use as a communication site in the absence of improvements made by the improver that the suitability of the land for communications purposes would affect its general market value.

"Before and after rule." In reappraisal of a communication site, the before and after rule is applied by determining the market value of the government tract including the site at the time of reappraisal, excluding any enhancement to or diminution from the site project, and subtracting therefrom the market value of the remaining government property interest, including enhancement or diminution from the project.

In the absence of better evidence of comparable leases, the "before and after" method should be employed in appraisals of communication sites under 43 CFR 2802.1-7.

In a case where a substantial increase is proposed in charges for a communication site under 43 CFR 2802.1-7(e), the required hearing should be conducted in accordance with the accepted concepts of due process.

American Telephone and Telegraph Company, et al., 25 IBLA 341 (June 30, 1976)

Under 43 U.S.C. § 961 (1970) and 43 CFR 2802.1-7(a), an applicant has no right to a hearing in connection with original charges for use and occupancy of a communication site, and a hearing pursuant to a request under 43 CFR 4.415 will not be granted where applicant fails to make specific allegations or offer specific proof to show in what factors a Departmental appraisal is in error.

Without convincing evidence that charges prescribed under 43 U.S.C. § 961 (1970) and 43 CFR 2802.1-7 for use and occupancy of a communication site are excessive, charges properly prescribed by an authorized officer will be sustained on appeal.

Departmental regulation 43 CFR 2802.1-7 contemplates that a charge will be initially established for the entire term of the grant of a communication site right-of-way.

Mountain States Telephone and Telegraph Company, 26 IBLA 393 (Sept. 16, 1976) 83 I.D. 332

COMMUNITY PROPERTY

Rights under an executory contract to acquire property entered into by the husband alone are presumed to be community property under California law, and a conveyance as community property to husband and wife in settlement of litigation regarding the contract corroborates the presumption; both spouses stand on equal footing with respect to charges, based on the executory contract, of violating the acreage limitations in sec. 7 of the Desert Land Act, 43 U.S.C. § 329 (1970).

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976) 83 I.D. 280

CONFLICT OF INTEREST

One of the functions of the Department of Justice is to construe the laws under which other Government Departments act, 28 U.S.C. § 512 (1970), and when the Department of Justice has advised the Department of the Interior that it has construed a conflict of interest statute affecting Members of Congress and has determined that it is permissible for the spouse of a Member of Congress to hold a grazing lease for national resource lands under certain circumstances, that opinion is binding on this Department, and a grazing lease is properly issued when the applicant has satisfied the criteria set forth by the Department of Justice.

Joseph T. Kurkowski, 24 IBLA 58 (Feb. 23, 1976)

CONSTITUTIONAL LAW

DUE PROCESS

Although a respondent in a grazing license trespass hearing brought by the Bureau of Land Management has the right to be represented and aided by legal counsel, the Department has no duty or responsibility under the Constitution or the Administrative Procedure Act to provide such counsel for him.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976) 83 I.D. 185

CONTESTS AND PROTESTS
(See also Rules of Practice.)

GENERALLY

Where a contestee makes a timely response to a government complaint in a mining contest, which can reasonably be construed as a general denial of the allegations contained in the complaint, the response will be considered a sufficient answer within the contemplation of the regulations. The allegations then cannot be taken as admitted and the mining claim declared null and void without a hearing.

United States v. Cliff Libby, 24 IBLA 39 (Feb. 19, 1976)

A mining claim is a claim to property which may not be declared invalid without proper notice and an adequate opportunity for an agency hearing in accordance with due process of law. That due process consists of notice and opportunity for hearing, and it suffices if the claimant is afforded the opportunity to be present and heard. The fact that the claimant, after filing a timely answer to the contest complaint, refused to attend that hearing and produce evidence does not vitiate the due process he has received.

United States v. Carl Bellamy, 25 IBLA 50 (May 14, 1976)

"Final entry." When an amended homestead final proof has been submitted, the term "final

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

entry" in the proviso in sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, as amended, 43 U.S.C. § 1165 (1970) refers to the submission, to the proper officials, of the amended final proof and required fees.

Under sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, as amended, 43 U.S.C. § 1165 (1970) which requires issuance of a patent 2 years after receipt upon final proof for a homestead entry, a contest against an entry should not be dismissed where the complaint was filed within 2 years following the submission of additional affidavits amending the entryman's deficient final proof, despite the fact that the receipt in connection with the deficient proof had been issued more than 2 years before filing of the complaint and the receipt had never been canceled or a new receipt issued.

United States v. Joe W. Bryant, 25 IBLA 247 (June 23, 1976)

A federal district court jury verdict in a suit to cancel desert land patents, that the entrymen and their purchaser under an illegal executory contract did not commit fraud against the United States, does not collaterally estop this Department from adjudicating a contest grounded on the illegal executory contract against the purchaser's own entry, because the legal standard applicable in the subsequent contest is different than that in the fraud action--a desert land entry can be subject to cancellation for acts that do not constitute fraud.

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976) 83 I.D. 280

Where the Bureau of Land Management determines that an Alaska Native allotment application should be rejected because the land was not used and occupied by the applicant, the BLM shall issue a contest complaint pursuant to 43 CFR 4.451 et seq. Upon receiving a timely answer to the complaint, which answer raises a disputed issue of material fact, the Bureau will forward the case file to the Hearings Division, Office of Hearings and Appeals, Department of the Interior, for assignment of an Administrative Law Judge, who will proceed to schedule a hearing at which the applicant may produce evidence to establish entitlement to his allotment.

Donald Peters, 26 IBLA 235 (Aug. 17, 1976) 83 I.D. 308

Although, in a mining claim contest, the Government may make a prima facie case of no discovery by the testimony of a mineral examiner that he has been on the land in issue and saw nothing of mineral value, a prima facie case is ordinarily not made where it is established that the examiner was not on the land in issue.

In a mining claim contest where a contestee is of the opinion that the Government did not

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the Administrative Law Judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

In a mining claim contest where the evidence of a valuable mineral deposit, submitted by contestee at a hearing, bearing on the validity of a mining claim, has greater probative weight than that offered by the Government, it is proper to find that contestee has preponderated and to dismiss, without prejudice, the complaint alleging no discovery of a valuable mineral deposit.

United States v. Arizona Mining and Refining Company, Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

Where an attorney files an answer to a contest concerning mining claims on behalf of certain individuals, who, during the pendency of the contest proceedings, transfer their interests in the mining claims to a corporation of which they are major stockholders and Directors, and the attorney represents those individuals and the corporation at the contest hearing, the corporation is bound by the determination reached therein, even though the corporation may not have received actual notice of the contest.

Service of a document upon a person's attorney of record constitutes effective service upon such person.

A request for postponement made more than 10 days prior to a hearing is properly denied where there has been no showing of good cause and proper diligence. A contestee's request for postponement is properly denied when (1) a contestee only seeks postponement in order to pursue an exchange of land for the claims; and (2) the Administrative Law Judge rules that the contestant may seek to dismiss the contest if an exchange is contemplated and the contestant does not wish to abate the contest proceedings.

A request for postponement made at a hearing or within 10 days of a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a party's assertion that it has not had adequate opportunity to prepare a defense where such difficulty could have been anticipated before the request was made.

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

Where a mineral examiner testifies on the basis of his examination of mining claims that the mineral values on the claims are insufficient to support a finding of discovery, a prima facie case against the validity of the claims has been established, and where the contestees walked out of the hearing and did not submit evidence to rebut the prima facie case, the claims must be declared invalid.

United States v. Mine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

Where, at the hearing of a mining claim contest, the transcript of a previous hearing in another related contest is received in evidence, those portions of the transcript which are relevant and material to the case at hand may form, or contribute to, the basis for the decision in the case, regardless of which party introduced the transcript in evidence.

United States v. J. R. Osborne, et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

Where the State of Alaska has applied to select certain land and has been given tentative approval of that selection, and thereafter a conflicting native allotment application is filed which is supported only by meager evidence of use and occupancy, it is error to allow the allotment application and to cancel the State's tentative approval and reject the selection application without notice and an opportunity for a hearing in which the State may participate.

State of Alaska, John Nusunginya, 28 IBLA 83 (Nov. 12, 1976)

In a mining contest, a matter not charged in the complaint may only be considered by the Administrative Law Judge if it was raised at the hearing without objection and the contestee was fully aware that the issue was raised.

United States v. Glenn C. Bolinder and L. O. Turner, et al., 28 IBLA 187 (Dec. 6, 1976) 83 I.D. 609

CONTRACTS

(See also Delegation of Authority, Rules of Practice.)

GENERALLY

The signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is the act that constitutes issuance of the lease and creates a binding contract; such a lease contract is not subject to cancellation by reason of inclusion of leased land in a known geologic structure as of a date subsequent to lease issuance.

Barbara C. Lisco, 26 IBLA 340 (Sept. 7, 1976)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION

Actions of Parties

Where the action of the Government clearly contributed to the delay for which liquidated damages were assessed and there was no basis for determining the portion of the delay for which each party was responsible, the Board found that no liquidated damages could properly be charged.

Appeal of David M. Cox, Inc., IBCA-1092-12-75 (July 22, 1976)

Insertion of the words "no exceptions" in a release executed by the contractor was held not to bar further consideration of the contractor's pending request for an extension of time where the Government's instructions for executing the release dealt only with claims in stated dollar amounts and directed the contractor to insert "no exceptions" if no such claims were to be filed and where in their conduct the parties did not treat the release as final.

Appeal of Addison Construction Co., IBCA-1064-3-75 (Sept. 29, 1976) 83 I.D. 353

Changes and Extras

Appellant's claim for an equitable adjustment under the changes clause for costs alleged to have been incurred when funds available for earnings became exhausted and work on the contract was suspended for 160 days is denied where construction was suspended more than 3 months ahead of the date on which appellant's earnings were scheduled to reach the amount of the fund reservation and where subsequent fund reservations kept the total amount of funds reserved for earnings above the scheduled earnings shown in appellant's own construction program which the Government had approved.

Appeal of S. A. Healy Co., IBCA-944-12-71 (Mar. 31, 1976) 83 I.D. 118

Cross motions for summary judgment are denied where the Board finds the stipulated record furnishes an insufficient basis for an informed judgment and that a hearing will be required for determining the merits of the entitlement question presented for decision.

Appeals of Armstrong & Armstrong, Inc., IBCA-1061-3-75 and IBCA 1072-7-75 (Apr. 7, 1976) 83 I.D. 148

Where in moving for reconsideration of a decision denying its claim for constructive acceleration, the contractor contended that the Bureau's failure to promptly investigate its claim of delay due to unusually severe weather amounted to a denial of a request for a time extension and that the denial plus other actions of Bureau inspectors constituted an

order to complete the work by the specified completion date irrespective of excusable delay and thus was an acceleration order, the Board ruled that a denial of a request for a time extension was insufficient in and of itself to constitute constructive acceleration and reviewing the evidence, affirmed the denial of the claim, holding that the actions of the inspectors were regarded as suggestions by the contractor and accepted or rejected depending on whether the suggestions were practical or economical.

Appeal of Iversen Construction Co. (a/k/a ICONCO), IBCA-981-1-73 (Apr. 19, 1976) 83 I.D. 179

Conflicting Clauses

Appellant's claim for an equitable adjustment under the changes clause for costs alleged to have been incurred when funds available for earnings became exhausted and work on the contract was suspended for 160 days is denied where construction was suspended more than 3 months ahead of the date on which appellant's earnings were scheduled to reach the amount of the fund reservation and where subsequent fund reservations kept the total amount of funds reserved for earnings above the scheduled earnings shown in appellant's own construction program which the Government had approved.

Appeal of S. A. Healy Co., IBCA-944-12-71 (Mar. 31, 1976) 83 I.D. 118

Contract Clauses

Under a contract requiring the use of grout the Board denies a contractor's claim where it finds the terms of the specifications dispositive of the question presented.

Appeal of Whalen & Company, IBCA-1066-3-75 (May 26, 1976)

Drawings and Specifications

Where the action of the Government clearly contributed to the delay for which liquidated damages were assessed and there was no basis for determining the portion of the delay for which each party was responsible, the Board found that no liquidated damages could properly be charged.

Appeal of David M. Cox, Inc., IBCA-1092-12-75 (July 22, 1976)

General Rules of Construction

Cross motions for summary judgment are denied where the Board finds the stipulated record

furnishes an insufficient basis for an informed judgment and that a hearing will be required for determining the merits of the entitlement question presented for decision.

Appeals of Armstrong & Armstrong, Inc., IBCA-1061-3-75 and IBCA-1072-7-75 (Apr. 7, 1976) 83 I.D. 148

Government-furnished Property

A cost-plus-fixed-fee contractor's claim for costs in excess of the estimated cost of the contract, incurred in correcting deficiencies in Government-furnished property, was denied where the contractor knew or should have known that costs being incurred would exceed the estimated cost, but failed to give the notice required by the Limitation of Cost clause and the evidence failed to furnish any basis for excusing the contractor's failure to give the required notice. The contractor's claim for additional fee on the extra work was sustained since the Limitation of Cost clause is not applicable to such claim.

Appeal of Booz, Allen & Hamilton, Inc., IBCA-1027-3-74 (Mar. 24, 1976) 83 I.D. 95

Protests

Where a construction contractor contended that the contracting officer's enforcement of a contract requirement for roll-over protective structures on all equipment regardless of age constituted a change because the requirement was contrary to standards issued by the Secretary of Labor under the Occupational Health and Safety Act (29 U.S.C. § 651 et seq. (1970)) and therefore void, the Board examined the contention in the light of OSHA and also under the Contract Work Hours and Safety Standards Act (40 U.S.C. § 327 et seq. (1970)) and concluded that, while it was unlikely that either statute was intended to preclude a Federal agency from contractually imposing more stringent safety requirements than prescribed by the Secretary of Labor, it was not necessary to decide the question since appellant's remedy for an alleged illegal clause was a protest in other forums prior to bidding and award.

Appeal of Paul E. McCollum, Sr. IBCA-1080-10-75 (Feb. 24, 1976) 83 I.D. 43

Subcontractors and Suppliers

Appellant cannot justify a request for a time extension by alleging its subcontractor breached its subcontract with appellant. Nor can appellant justify a request for a time extension due to unavailability of certain

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Subcontractors and Suppliers--Continued

supplies when there is a failure to establish the supplies were timely ordered.

Appeal of David M. Cox, Inc., IBCA-1079-10-75 (Apr. 7, 1976)

DISPUTES AND REMEDIES

Generally

Where a construction contractor contended that the contracting officer's enforcement of a contract requirement for roll-over protective structures on all equipment regardless of age constituted a change because the requirement was contrary to standards issued by the Secretary of Labor under the Occupational Health and Safety Act (29 U.S.C. § 651 et seq. (1970)) and therefore void, the Board examined the contention in the light of OSHA and also under the Contract Work Hours and Safety Standards Act (40 U.S.C. § 327 et seq. (1970)) and concluded that, while it was unlikely that either statute was intended to preclude a Federal agency from contractually imposing more stringent safety requirements than prescribed by the Secretary of Labor, it was not necessary to decide the question since appellant's remedy for an alleged illegal clause was a protest in other forums prior to bidding and award.

Appeal of Paul E. McCollum, Sr. IBCA-1080-10-75 (Feb. 24, 1976) 83 I.D. 43

Burden of Proof

A claim for a longer time extension under a construction contract due to unusually severe weather is denied where the contracting officer obtained the local climatological data and after reviewing the data granted a time extension when appellant failed to dispute the data or offer any evidence to support its claim for a longer period.

Appeal of David M. Cox, Inc., IBCA-1079-10-75 (Apr. 7, 1976)

Where in moving for reconsideration of a decision denying its claim for constructive acceleration, the contractor contended that the Bureau's failure to promptly investigate its claim of delay due to unusually severe weather amounted to a denial of a request for a time extension and that the denial plus other actions of Bureau inspectors constituted an order to complete the work by the specified completion date irrespective of excusable delay and thus was an acceleration order, the Board ruled that a denial of a request for a time extension was insufficient in and of itself to constitute constructive acceleration and reviewing the evidence, affirmed the denial of the claim, holding that the actions of the inspectors were regarded as suggestions

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

by the contractor and accepted or rejected depending on whether the suggestions were practical or economical.

Appeal of Iversen Construction Co. (a/k/a ICONCO) IBCA-981-1-73 (Apr. 19, 1976) 83 I.D. 179

Under a contract requiring the use of grout the Board denies a contractor's claim where it finds the terms of the specifications dispositive of the question presented.

Appeal of Whalen & Company, IBCA-1066-3-75 (May 26, 1976)

When the contractor is at fault for failure to perform the contract within the contract period and cannot establish any cause for an excusable delay, the Government is justified in terminating the contract for default and assessing excess reprocurement costs and liquidated damages.

Appeal of Timothy Mason, IBCA-1076-9-75 (July 29, 1976) 83 I.D. 297

Where the Government failed to explain the presence of water which entered a 230 KV reactor while the reactor was under Government control and protected by Government security measures and where the water caused more extensive repairs to the reactor than would otherwise have been necessary, the Board found no basis for determining the portion of the delay for which each party was responsible and held that liquidated damages could not be charged for any of the delay.

Appeal of Addison Construction Co., IBCA-1064-3-75 (Sept. 29, 1976) 83 I.D. 353

Damages

Liquidated Damages

Where the action of the Government clearly contributed to the delay for which liquidated damages were assessed and there was no basis for determining the portion of the delay for which each party was responsible, the Board found that no liquidated damages could properly be charged.

Appeal of David M. Cox, Inc., IBCA-1092-12-75 (July 22, 1976)

Where the Government failed to explain the presence of water which entered a 230 KV reactor while the reactor was under Government control and protected by Government security measures and where the water caused more extensive repairs to the reactor than would otherwise

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Damages--Continued

Liquidated Damages--Continued

have been necessary, the Board found no basis for determining the portion of the delay for which each party was responsible and held that liquidated damages could not be charged for any of the delay.

Appeal of Addison Construction Co., IBCA-1064-3-75 (Sept. 29, 1976) 83 I.D. 353

Jurisdiction

An appeal by a concessionaire at a wildlife refuge who alleges that Government harassment of the public, failure to repair roads and other actions resulted in a decrease of business and who seeks therefor to be relieved of payment of a semi-annual franchise fee of 3 percent of gross receipts required under the concession agreement and given the right to sell beer, inter alia, is dismissed for lack of jurisdiction, since the agreement contains no adjustment provisions and the relief requested entails reformation of the agreement, but is remanded to the contracting officer, who has wide discretion under the agreement to provide relief, for further consideration in the light of the Board's opinion.

Appeal of Pirate's Cove Marina, IBCA-1018-2-74 (Feb. 25, 1975) 83 I.D. 445

Termination for Default

Generally

Where a construction contractor failed to appeal from a notice of termination for default which included findings that the contractor's delay in performing the work was not due to excusable causes, but did file a timely appeal from a damage assessment for, inter alia, the increased cost of completing the work, the Board denied the Government's motion to strike paragraphs of the complaint alleging that the contractor's delay was due to excusable causes and that the termination for default was improper since under the so-called Fulford doctrine, which has been held equally applicable to construction contracts, an appeal from a damage or excess cost assessment following a termination for default allows the contractor to contest the propriety of the termination.

Where certain paragraphs of a complaint filed by a construction contractor in an appeal from a damage assessment following a termination for default raised issues as to the propriety of the termination, the Board denied a Government motion to strike those paragraphs based on contentions that the contractor had agreed that delay in completion of the work was not excusable and that the contractor's agreement to a revised date for completion of the work precluded it from raising issues as to the excusability

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Default--Continued

Generally--Continued

of delays occurring prior to the agreement, since it is well settled that accord and satisfaction is an affirmative defense which must be pleaded and proved and that allegations of accord and satisfaction raise factual issues as to the intent of the parties of the time of the alleged accord.

Appeal of Airco, Inc., IBCA-1074-8-75 (Apr. 6, 1976) 83 I.D. 137

Excess Costs

When the contractor is at fault for failure to perform the contract within the contract period and cannot establish any cause for an excusable delay, the Government is justified in terminating the contract for default and assessing excess reprocurement costs and liquidated damages.

Appeal of Timothy Mason, IBCA-1076-9-75 (July 29, 1976) 83 I.D. 297

FORMATION AND VALIDITY

Authority to Make

Where a construction contractor contended that the contracting officer's enforcement of a contract requirement for roll-over protective structures on all equipment regardless of age constituted a change because the requirement was contrary to standard issued by the Secretary of Labor under the Occupational Health and Safety Act (29 U.S.C. § 651 et seq. (1970)) and therefore void, the Board examined the contention in the light of OSHA and also under the Contract Work Hours and Safety Standards Act (40 U.S.C. § 327 et seq. (1970)) and concluded that, while it was unlikely that either statute was intended to preclude a Federal agency from contractually imposing more stringent safety requirements than prescribed by the Secretary of Labor, it was not necessary to decide the question since appellant's remedy for an alleged illegal clause was a protest in other forums prior to bidding and award.

Appeal of Paul E. McCollum, Sr., IBCA-1080-10-75 (Feb. 24, 1976) 83 I.D. 43

Cost-type Contracts

A cost-plus-fixed-fee contractor's claim for costs in excess of the estimated cost of the contract, incurred in correcting deficiencies in Government-furnished property, was denied where the contractor knew or should have known that costs being incurred would exceed the estimated cost, but failed to give the notice required by the Limitation of Cost

CONTRACTS--Continued

FORMATION AND VALIDITY--Continued

Cost-type Contracts--Continued

clause and evidence failed to furnish any basis for excusing the contractor's failure to give the required notice. The contractor's claim for additional fee on the extra work was sustained since the Limitation of Cost clause is not applicable to such claims.

Appeal of Booz, Allen & Hamilton, Inc., IBCA-1027-3-74 (Mar. 24, 1976) 83 I.D. 95

PERFORMANCE OR DEFAULT

Acceleration

Where in moving for reconsideration of a decision denying its claim for constructive acceleration, the contractor contended that the bureau's failure to promptly investigate its claim of delay due to unusually severe weather amounted to a denial of a request for a time extension and that the denial plus other actions of Bureau inspectors constituted an order to complete the work by the specified completion date irrespective of excusable delay and thus was an acceleration order, the Board ruled that a denial of a request for a time extension was insufficient in and of itself to constitute constructive acceleration and reviewing the evidence, affirmed the denial of the claim, holding that the actions of the inspectors were regarded as suggestions by the Contractor and accepted or rejected depending on whether the suggestions were practical or economical.

Appeal of Iversen Construction Co. (a/k/a ICONCO), IBCA-981-1-73 (Apr. 19, 1976) 83 I.D. 179

Excusable Delays

A claim for a longer time extension under a construction contract due to unusually severe weather is denied where the contracting officer obtained the local climatological data and after reviewing the data granted a time extension when appellant failed to dispute the data or offer any evidence to support its claim for a longer period.

Appeal of David M. Cox, Inc., IBCA-1079-10-75 (Apr. 7, 1976)

When the contractor is at fault for failure to perform the contract within the contract period and cannot establish any cause for an excusable delay, the Government is justified in terminating the contract for default and assessing excess reprocurement costs and liquidated damages.

Appeal of Timothy Mason, IBCA-1076-9-75 (July 29, 1976) 83 I.D. 297

Where the Government failed to explain the presence of water which entered a 230 KV reactor

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Excusable Delays--Continued

while the reactor was under Government control and protected by Government security measures and where the water caused more extensive repairs to the reactor than would otherwise have been necessary, the Board found no basis for determining the portion of the delay for which each party was responsible and held that liquidated damages could not be charged for any of the delay.

Appeal of Addison Construction Co., IBCA-1064-3-75 (Sept. 29, 1976) 83 I.D. 353

Release and Settlement

Where certain paragraphs of a complaint filed by a construction contractor in an appeal from a damage assessment following a termination for default raised issues as to the propriety of the termination, the Board denied a Government motion to strike those paragraphs based on contentions that the contractor had agreed that delay in completion of the work was not excusable and that the contractor's agreement to a revised date for completion of the work precluded it from raising issues as to the excusability of delays occurring prior to the agreement, since it is well settled that accord and satisfaction is an affirmative defense which must be pleaded and proved and that allegations of accord and satisfaction raise factual issues as to the intent of the parties at the time of the alleged accord.

Appeal of Airco, Inc., IBCA-1074-8-75 (Apr. 6, 1976) 83 I.D. 137

Insertion of the words "no exceptions" in a release executed by the contractor was held not to bar further consideration of the contractor's pending request for an extension of time where the Government's instructions for executing the release dealt only with claims in stated dollar amounts and directed the contractor to insert "no exceptions" if no such claims were to be filed and where in their conduct the parties did not treat the release as final.

Appeal of Addison Construction Co., IBCA-1064-3-75 (Sept. 29, 1976) 83 I.D. 353

Substantial Performance

To support a claim of substantial completion of a construction contract, appellant must establish that the project was capable of adequately serving its intended purpose.

Appeal of David M. Cox, Inc., IBCA-1079-10-75 (Apr. 7, 1976)

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Suspension of Work

Appellant's claim for an equitable adjustment under the changes clause for costs alleged to have been incurred when funds available for earnings became exhausted and work on the contract was suspended for 160 days is denied where construction was suspended more than 3 months ahead of the date on which appellant's earnings were scheduled to reach the amount of the fund reservation and where subsequent fund reservations kept the total amount of funds reserved for earnings above the scheduled earnings shown in appellant's own construction program which the Government had approved.

Appeal of S. A. Healy Co., IBCA-944-12-71 (Mar. 31, 1976) 83 I.D. 118

Waiver and Estoppel

A cost-plus-fixed-fee contractor's claim for costs in excess of the estimated cost of the contract, incurred in correcting deficiencies in Government-furnished property, was denied where the contractor knew or should have known that costs being incurred would exceed the estimated cost, but failed to give the notice required by the Limitation of Cost clause and the evidence failed to furnish any basis for excusing the contractor's failure to give the required notice. The contractor's claim for additional fee on the extra work was sustained since the Limitation of Cost Clause is not applicable to such claims.

Appeal of Booz, Allen & Hamilton, Inc., IBCA-1027-3-74 (Mar. 24, 1976) 83 I.D. 95

CONVEYANCES

GENERALLY

Where the purchaser from the railroad of unpatented land believed at the time of his purchase that the land was mineral, and there was physical evidence of its mineral character, or if conditions were such that the purchaser should have known then that the land was excepted from the grant to the railroad, he was not a purchaser in good faith within the "innocent purchaser" proviso of sec. 321(b) of the Transportation Act of 1940.

Southern Pacific Transportation Co., Jay R. Fogal; Lloyd D. Hayes (Intervenor), 23 IBLA 232 (Jan. 9, 1976) 83 I.D. 1

A color of title application is properly rejected where the applicant has failed to establish how conveyances in her chain of title describing lands different from that described in her application, and different from each other, give color of title to the applied for land for the requisite period of time.

Generally, conveyances which describe only a "possessory interest" in a parcel of land do

CONVEYANCES--Continued

GENERALLY--Continued

not constitute a claim or color of title within the contemplation of the color of Title Act.

Jeanne Pierresteguy, 23 IBLA 358 (Jan. 23, 1976) 83 I.D. 23

INTEREST CONVEYED

In the absence of legislation by Congress, a patent from the United States does not convey an implied easement by way of necessity across public land.

Sun Studs, Inc., 27 IBLA 278 (Oct. 26, 1976) 83 I.D. 518

DELEGATION OF AUTHORITY

GENERALLY

A stipulation requiring an oil and gas lessee to provide a certified statement by an archaeologist concerning the existence of archaeological values on lands to be disturbed by the lessee does not constitute an unlawful delegation of authority because the purpose of the statement is to notify an authorized officer of the Department who retains the authority to determine whether the archaeological data are significant and whether such data are being or may be irrevocably lost or destroyed.

Cecil A. Walker, Alan C. F. Dille', 26 IBLA 71 (July 9, 1976)

Where the regulations and Departmental and BLM Manuals do not specifically state how disputes between the Fish and Wildlife Service and the Bureau of Land Management over issuing sodium prospecting permits for lands within wildlife refuge areas are to be resolved, but the Departmental manuals indicate that such decisions are to be made by the Secretary and the BLM Manual directs that such applications be forwarded to the Washington Office, a decision of a State Office rejecting an application for a sodium prospecting permit will be set aside and the case remanded for processing in accordance with the Departmental and BLM Manuals.

Vernal E. Bess, et al., 27 IBLA 4 (Sept. 17, 1976)

EXTENT OF

Since the Bureau of Land Management has no authority to issue a public land order withdrawing land, such authority existing only in the Secretary, the Under Secretary, and the Assistant Secretaries of the Department of the Interior, recommendations by officers of the Bureau of Land Management relating to

DELEGATION OF AUTHORITY--Continued

EXTENT OF--Continued

withdrawals are not subject to review under the provisions of 43 CFR 4.450-2 or 43 CFR 4.410.

City of Kotzebue, 26 IBLA 264 (Aug. 20, 1976) 83 I.D. 313

DESERT LAND ENTRY

GENERALLY

A federal district court jury verdict in a suit to cancel desert land patents, that the entrymen and their purchaser under an illegal executory contract did not commit fraud against the United States, does not collaterally estop this Department from adjudicating a contest grounded on the illegal executory contract against the purchaser's own entry, because the legal standard applicable in the subsequent contest is different than that in the fraud action--a desert land entry can be subject to cancellation for acts that do not constitute fraud.

"Hold by assignment or otherwise." The purchaser of desert land under an illegal executory contract did not commit fraud against to patent "holds" that land within the meaning of the acreage limitation of sec. 7 of the Desert Land Act, as amended, 43 U.S.C. § 329 (1970).

Rights under an executory contract to acquire property entered into by the husband alone are presumed to be community property under California law, and a conveyance as community property to husband and wife in settlement of litigation regarding the contract corroborates the presumption; both spouses stand on equal footing with respect to charges, based on the executory contract, of violating the acreage limitations in sec. 7 of the Desert Land Act, 43 U.S.C. § 329 (1970).

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976) 83 I.D. 280

It is proper to reject applications for desert land entries filed for lands which have been classified by the Secretary, pursuant to the petition classification procedure set forth in 43 CFR subpart 2450, as unsuitable for desert land entry and, therefore, are not open for disposition under the desert land laws. The decision of the Secretary is the final Departmental action and the applicants cannot have a review on the merits of an appeal from the subsequent decision rejecting their applications.

Guy A. Martin, Ada E. Martin, 26 IBLA 254 (Aug. 18, 1976)

Rejection of a desert land entry application because the applicant has failed to supply satisfactory evidence of a right to the permanent use of sufficient water to irrigate

DESERT LAND ENTRY--Continued

GENERALLY--Continued

and reclaim the irrigable portion of the entry will be set aside and the applicant's request for a hearing granted where there is conflicting evidence in the record concerning the sufficiency of the water supply and where the applicant has alleged facts which, if proved, would result in a different conclusion.

Dixie L. Bjornestad, et al., 27 IBLA 201 (Oct. 6, 1976)

APPLICATIONS

Where a desert land applicant appeals from a decision of the Bureau of Land Management holding his application incomplete and, therefore, without priority of filing as against a subsequent application, which was allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for final action on the respective applications so as to avoid premature, piecemeal adjudication.

Nelda E. McAndrew, 24 IBLA 205 (Mar. 22, 1976)

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed state application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the Bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia D. Ellis, 24 IBLA 387 (May 3, 1976)

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed therefor and any payment submitted therewith will be returned. Should there be a subsequent reclassification as suitable for disposal under the desert land laws, the land will be opened to entry on an equal opportunity basis.

One who submits a desert land entry petition-application for lands which have been classified as being unsuitable for disposal under the desert land laws gains no preference right to such lands should they be reclassified as disposable under the desert land laws. Lands which are reclassified as suitable for disposal will be opened to entry on an equal opportunity basis.

A desert land entry petition-application for land classified as being unsuitable for

DESERT LAND ENTRY--Continued

APPLICATIONS--Continued

disposal under the desert land laws may not be held in suspense pending the possible future availability of the land.

Ralph G. Faulkner, et al., 26 IBLA 110 (July 26, 1976)

CANCELLATION

In the case of a desert land entry contestee who violates the 320-acre limitation on holding desert land because he is the "purchaser" of two other 320-acre entries under an illegal executory contract to convey after patent, all entries held by the "purchaser" are subject to cancellation, and the Department may proceed by way of contest against the "purchaser's" own entry, which was not a subject of the illegal contract.

The doctrine of voluntary recission--which allows an entryman, who was, although in good faith, party to a contract that violated the desert land law, to proceed to the merits of his proof upon repudiation of the contract--will not be applied when: (1) repudiation of the contract was not truly voluntary; (2) the recission occurred long after the entries' lives expired; (3) the illegal contract involved a complex of four entries; and (4) no other mitigating circumstances are present.

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976) 83 I.D. 280

A desert land entry is properly canceled when the statutory life of the entry, including an extension that was granted, has expired without reclamation and cultivation of the entry, as required under the desert land law, and the entrywoman fails to show that she is entitled to a further extension of time to complete the requirements of the desert land law.

Pamela M. Brower, 26 IBLA 366 (Sept. 8, 1976)

EXTENSION OF TIME

An application for an extension of time for the submission of final proof of a desert land entry is properly rejected where the entrywoman is unable to show that her failure to reclaim the land in her entry within the statutory life of the entry is due, without fault on her part, to unavoidable delay in the construction of irrigation facilities intended to convey water to the entry, and where it appears, rather, that the failure was the result either of the lack of financing, lack of diligence in carrying out the development work, or lack of foresight in anticipating the burden of doing the work. A second extension of time to file final proof on the entry is properly denied to an entrywoman

DESERT LAND ENTRY--Continued

EXTENSION OF TIME--Continued

who fails to show that she utilized a first extension in a reasonable effort to accomplish the development work.

Pamela M. Brower, 26 IBLA 366 (Sept. 8, 1976)

FINAL PROOF

The doctrine of voluntary recission--which allows an entryman, who was, although in good faith, party to a contract that violated the desert land law, to proceed to the merits of his proof upon repudiation of the contract--will not be applied when (1) repudiation of the contract was not truly voluntary; (2) the recission occurred long after the entries' lives expired; (3) the illegal contract involved a complex of four entries; and (4) no other mitigating circumstances are present.

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976) 83 I.D. 280

LANDS SUBJECT TO

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed state application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the Bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia D. Ellis, 24 IBLA 387 (May 3, 1976)

WATER SUPPLY

Rejection of a desert land entry application because the applicant has failed to supply satisfactory evidence of a right to the permanent use of sufficient water to irrigate and reclaim the irrigable portion of the entry will be set aside and the applicant's request for a hearing granted where there is conflicting evidence in the record concerning the sufficiency of the water supply and where the applicant has alleged facts which, if proved, would result in a different conclusion.

Dixie L. Bjornestad, et al., 27 IBLA 201 (Oct. 6, 1976)

ENVIRONMENTAL QUALITY

GENERALLY

Where the reason given for the partial rejection of a noncompetitive geothermal lease application is that the Environmental Analysis Record has recommended against leasing the lands because they lie within an area associated with historic trails, and the records indicate that the State Office has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether the lands should be leased with protective stipulations.

Richard C. Hoefle, 24 IBLA 181 (Mar. 16, 1976)

Kirk Greene, 24 IBLA 262 (Mar. 29, 1976)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where a Bureau of Land Management district-wide environmental analysis record establishes the likelihood that significant archaeological values are prevalent in the district and may be found in the land embraced by leases in that district, a special protective stipulation is not unreasonable solely because no archaeological values have yet been discovered in the lands in the lease offer.

Oil and gas lessees must bear the expenses occasioned by compliance with stipulations for the protection of the environment and other land use values.

Cecil A. Walker, Alan C. F. Dille', 26 IBLA 71 (July 9, 1976)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. But where a State Office of the Bureau of Land Management seeks to impose a "no surface occupancy" stipulation, the most stringent of stipulations, without showing that it has considered less stringent stipulations, the decisions will be set aside. Where the stated basis for the imposition of the stipulation is the threat of oil and gas activities to automobile racing, the decision will be set aside particularly where the lease offers include land primarily outside the boundaries of the racing grounds withdrawal.

Vern K. Jones, et al., 26 IBLA 165 (Aug. 4, 1976)

It is proper to include environmental protection stipulations in a phosphate lease even though the stipulations apply to privately owned surface lands overlying the federally reserved mineral estate under lease or to

GENERALLY--Continued

privately owned lands used in conjunction with the lease.

Cominco American, Inc., 26 IBLA 329 (Sept. 1, 1976)

The Bureau of Land Management may issue a sodium prospecting permit for lands adjacent to areas withdrawn for wildlife conservation purposes subject to a stipulation which provides that, in the event of discovery of an exploitable sodium deposit, no preference-right lease will be issued unless hydrologic and other environmental analyses indicate that sodium ore can be removed without a significant adverse environmental impact on the wildlife habitat within the withdrawn areas.

David E. Hughes, 27 IBLA 46 (Sept. 23, 1976)

ENVIRONMENTAL STATEMENTS

The drawing of an offer for a noncompetitive lease in a simultaneous oil and gas lease drawing creates no vested rights in the offeror, and the offeror cannot compel the issuance of a lease before an environmental analysis has been made where the Bureau of Land Management has determined that the environmental analysis is necessary for the protection of the resources of the particular area.

Paula J. Jones, 24 IBLA 76 (Feb. 24, 1976)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where a Bureau of Land Management district-wide environmental analysis record establishes the likelihood that significant archaeological values are prevalent in the district and may be found in the land embraced by leases in that district, a special protective stipulation is not unreasonable solely because no archaeological values have yet been discovered in the lands in the lease offer.

Cecil A. Walker, Alan C. F. Dille', 26 IBLA 71 (July 9, 1976)

ESTOPPEL

The doctrine of collateral estoppel will not bar the administrative contest of the validity of five mining claims which, together with another claim, were the subject of previous condemnation actions for the taking of a temporary exclusive easement over the claims, where the issue of the validity of the individual claims was not actually litigated and it was wholly unnecessary for the

ESTOPPEL--Continued

Court to adjudicate that issue in rendering its judgment.

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimant concerning the validity of the claim with the intention that the claimant should act in reliance thereon, with the result that the claimant was thereby induced to do so, to his ultimate damage.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

A noncompetitive oil and gas lease applicant's failure to submit the statement of interest of the other parties in interest to the offer is not excused, nor is the Department estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease to the applicant on an offer which was deficient for the same reason.

Leon M. Flanagan, et al., 25 IBLA 269 (June 24, 1976)

Prior recognition of grazing privileges based on licensee's erroneous statement of ownership of base property does not estop the Department from canceling the privileges when it becomes aware of the facts.

Charles Stewart, 26 IBLA 160 (Aug. 4, 1976)

The fact that assessment work has been performed on a mining claim does not estop the Government from determining the validity of a claim by proper proceedings giving adequate notice and an opportunity for a hearing where there are disputed determinative facts. However, where the claim was located after land has been withdrawn from mining, it is proper for the Bureau of Land Management to declare a claim null and void ab initio without a hearing.

Roy R. Cummins, 26 IBLA 223 (Aug. 17, 1976)

An applicant for a private land exchange cannot benefit from the doctrine of equitable estoppel where no agent of the Government who was authorized to consummate the exchange falsely and materially misrepresented to or concealed material facts from appellant concerning the Government's position with respect to the proposed exchange.

Siesta Investments, Inc., 28 IBLA 118 (Nov. 15, 1976)

EVIDENCE

GENERALLY

Where the government fails to present a prima facie case, a contestee, upon timely motion,

EVIDENCE--Continued

GENERALLY--Continued

may move to dismiss the case and then rest. If, however, he goes forward and presents evidence, that evidence will be considered as part of the entire evidentiary record. Therefore, even if the Government has failed to make a satisfactory prima facie case, or the case is weak, contestee's evidence may be used against him to establish that case. Furthermore, where contestee chooses to rebut the case, he must do so by a preponderance of the evidence, bearing the risk of nonpersuasion if he fails.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

Although, in a mining claim contest, the Government may make a prima facie case of no discovery by the testimony of a mineral examiner that he has been on the land in issue and saw nothing of mineral value, a prima facie case is ordinarily not made where it is established that the examiner was not on the land in issue.

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the Administrative Law Judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

United States v. Arizona Mining and Refining Company, Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

In determining whether a profitable market existed for material from a particular mining claim from which no material has been sold, a hypothetical market must be created in which the new material plays its part. The new material from the claim at issue must be included with that from all other known potentially competitive sources in calculating the factor of supply. If the supply so calculated amounts to a superabundance and so overwhelms the existing demand as to reduce the value or profit increment to a level below that which would prove attractive to a prudent man, the material cannot be said to be marketable at a profit.

United States v. J. R. Osborne, et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

EVIDENCE--Continued

ADMISSIBILITY

Where, in an effort to negotiate a compromise settlement of an alleged grazing trespass, a rancher concedes that the trespass occurred to the extent of a specific number of animal unit months of forage, but the proposed settlement is not consummated and the case goes to a hearing on its merits, evidence of the purported admissions made by the party during such negotiations must be excluded as not competent to show either the fact or the extent of the trespass alleged.

Cesar and Robert Siard, 26 IBLA 29 (July 8, 1976)

Where the testimony and conclusions of an expert witness are based on careful examination of a mining claim by appropriate scientific methods, they will be accepted into evidence and given appropriate weight regardless of the fact that the witness may not be registered within that particular state as an expert in his field.

Cabot Sedgwick, et al. v. O. M. Parker, 27 IBLA 256 (Oct. 20, 1976)

The testimony of a qualified geologist and professional mining evaluation engineer concerning the marketability of a deposit of sand and gravel at a particular time may be accorded substantial evidentiary weight under the standard in Verrue v. United States, 457 F.2d 1202 (9th Cir. 1972), if it is established that he was in the area at the time, had studied the local sand and gravel market and the factors which affected it, as well as the nature of the material and the methods and costs of removing, processing and marketing it.

United States v. J. R. Osborne, et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

BURDEN OF PROOF

A determination by a District Manager of the grazing capacity of lands offered for a sec. 15 grazing lease will not be overturned in the absence of a clear showing of error. The burden of proof is upon the party challenging such determination to show that the decision is erroneous or that he has not been dealt with fairly.

Kaser Brothers, 24 IBLA 265 (Mar. 29, 1976)

In a mining contest, the mining claimant is the proponent of a rule or order that he has complied with the mining laws entitling him to validation of the claim, and the claimant has the ultimate burden of proof. The Government has assumed the burden of going forward with sufficient evidence to establish a prima facie case of invalidity. When this has been done, the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

EVIDENCE--Continued

BURDEN OF PROOF--Continued

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

Where the government fails to present a prima facie case, a contestee, upon timely motion, may move to dismiss the case and then rest. If, however, he goes forward and presents evidence, that evidence will be considered as part of the entire evidentiary record. Therefore, even if the Government has failed to make a satisfactory prima facie case, or the case is weak, contestee's evidence may be used against him to establish that case. Furthermore, where contestee chooses to rebut the case, he must do so by a preponderence of the evidence, bearing the risk of nonpersuasion if he fails.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

CREDIBILITY

While the existence of other land values does not qualify a locator's rights under the mining law if he has a valid claim, evidence of such other values may be considered in assessing the weight and credibility to be accorded the locator's testimony in determining whether a discovery has been made, and may be a factor in evaluating his bona fide intention to develop a mining operation.

United States v. J. R. Osborne, et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

OFFICIAL NOTICE

Following a hearing under 43 CFR 2802.1-7, a decision increasing the charges for use and occupancy of a communication site is in error to the extent that the decision is based upon unspecified evidence not in the record and not made known to the user, and the decision must be set aside.

American Telephone and Telegraph Company, et al., 25 IBLA 341 (June 30, 1976)

SUFFICIENCY

Where, at the hearing of a mining claim contest, the transcript of a previous hearing in another related contest is received in evidence, those portions of the transcript which are relevant and material to the case at hand may form, or contribute to, the basis for the decision in the case, regardless of

EVIDENCE--Continued

SUFFICIENCY--Continued

which party introduced the transcript in evidence.

Material which is principally valuable for use as fill, sub-base or ballast, for which ordinary earth or rock may be used, is not locatable under the mining laws, and even if the material is suitable for other purposes, its value for the above uses cannot be considered in determining its marketability as a valuable mineral deposit within the ambit of the general mining law.

In a contest of a mining claim located for common variety mineral materials prior to July 23, 1955, after which such locations were proscribed by law, where there has been no mining and no sales, the test of the validity of the claim is whether the claimant(s) could have mined and marketed the material profitably prior to that date and thereafter. The evidence tending to so show must relate to what a prudent man would have been reasonably justified in doing based upon the actual known circumstances at the time, not upon what he might have done if the proper conditions had then prevailed.

United States v. J. R. Osborne, et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

WEIGHT

Where the testimony and conclusions of an expert witness are based on careful examination of a mining claim by appropriate scientific methods, they will be accepted into evidence and given appropriate weight regardless of the fact that the witness may not be registered within that particular state as an expert in his field.

Cabot Sedgwick, et al. v. O. M. Parker, 27 IBLA 256 (Oct. 20, 1976)

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The testimony of a qualified geologist and professional mining evaluation engineer concerning the marketability of a deposit of sand and gravel at a particular time may be accorded substantial evidentiary weight under the standard in Verrue v. United States, 457 F.2d 1202 (9th Cir. 1972), if it is established that he was in the area at the time, had studied the local sand and gravel market and the factors which affected it, as well as the nature of the material and the methods and costs of removing, processing and marketing it.

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EVIDENCE--Continued

WEIGHT--Continued

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While the existence of other land values does not qualify a locator's rights under the mining law if he has a valid claim, evidence of such other values may be considered in assessing the weight and credibility to be accorded the locator's testimony in determining whether a discovery has been made, and may be a factor in evaluating his bona fide intention to develop a mining operation.

United States v. J. R. Osborne, et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

ABATEMENT

Withdrawal Orders

When an inspector finds that an operator has failed to abate a violation within the time originally fixed in a sec. 104(b) notice, he abuses his enforcement discretion by issuing a withdrawal order if, in the circumstances, the time for abatement should be further extended. 30 U.S.C. § 814(b) (1970).

Old Ben Coal Company, 6 IBMA 294 (Sept. 16, 1976) 83 I.D. 335

ADMINISTRATIVE PROCEDURE

Defaults

Generally

Under 43 CFR 4.544, an Administrative Law Judge abuses his discretion in denying a motion to enter a default for failure to file an answer where the sole excuse for such failure is the Respondent's voluntary refusal to assign personnel or hire an attorney to perform that task.

Karst-Robbins Coal Co., Inc., 6 IBMA 78 (Mar. 22, 1976) 83 I.D. 88

Affirmative Defenses

In a default proceeding, an Administrative Law Judge errs by sua sponte raising an affirmative defense. 43 CFR 4.582.

P & P Coal Company, 6 IBMA 86 (Mar. 22, 1976) 83 I.D. 91

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

ADMINISTRATIVE PROCEDURE--Continued

Reconsideration

Where an initial decision has been issued and a notice of appeal has been filed with the Board of Mine Operations Appeals, an Administrative Law Judge is precluded by 43 CFR 4.582(c) from granting a subsequently filed motion for reconsideration, there being no jurisdiction.

In the Matter of Old Ben Coal Company (No. 24 Mine), 6 IBMA 138 (May 6, 1976) 83 I.D. 207

APPEALS

Generally

Where a party fails to raise an issue in prehearing pleadings, or at the hearing it is precluded from doing so before the Board unless such issue involves jurisdiction or mootness.

Clinchfield Coal Company, 6 IBMA 319 (Sept. 27, 1976) 83 I.D. 350

APPLICATIONS FOR REVIEW

Issues

An Administrative Law Judge may not decide an issue not properly raised in an Application for Review nor agreed upon by the parties unless it pertains to jurisdiction.

Kanawha Coal Company, 7 IBMA 158 (Dec. 21, 1976) 83 I.D. 704

Pleading

Where an applicant has filed an application for review containing an incomplete request for relief, but later makes clear all the specifics of the relief desired without objection, a responding party shall be deemed on appeal to have waived any claim of error below based upon an Administrative Law Judge's decision to grant the portion of the relief ultimately requested but not mentioned in such application. 43 CFR 4.532(a)(1).

Old Ben Coal Company, 6 IBMA 294 (Sept. 16, 1976) 83 I.D. 335

ENTITLEMENT OF MINERS

Generally

Responsibility for the enforcement of sec. 203(b)(3) is vested in the Secretary of the Interior. 30 U.S.C. § 843(b)(3) (1970).

Pocahontas Fuel Company, 7 IBMA 121 (Dec. 20, 1976) 83 I.D. 690

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

ENTITLEMENT OF MINERS--Continued

Compensation

Generally

Miners are entitled to compensation under sec. 110(a) of the Act when secs. 103(b) and 104(c) withdrawal orders are in effect concurrently even if the 103(f) order was issued first. Such compensation, however, is computed with reference only to the duration of the sec. 104(c) orders.

Roscoe Page, et al. v. Valley Camp Coal Company, 6 IBMA 1 (Jan. 28, 1976) 83 I.D. 28

The phrase "regular rate of pay," as used in sec. 203(b)(3), means the rate of compensation due a miner under his job classification under the current wage agreement.

Pocahontas Fuel Company, 7 IBMA 121 (Dec. 20, 1976) 83 I.D. 690

Discharge

Generally

In order to conclude that a discharge occurs "* * * by reason of the fact that * * *" a miner has engaged in protected reporting activities, an Administrative Law Judge must find that such discharge would not have occurred but for such activities. 30 U.S.C. § 820(b)(1)(A) (1970).

Steve Shapiro v. Bishop Coal Company, 6 IBMA 28 (Mar. 2, 1976) 83 I.D. 59

Legitimate Cause

Where an operator asserts and establishes a legitimate cause for discharge the applicant for review must show by affirmative and persuasive evidence that the invocation of such cause was a pretext for an unlawful motive in order to show a violation of sec. 110(b)(1). 30 U.S.C. § 820(b)(1) (1970).

Steve Shapiro v. Bishop Coal Company, 6 IBMA 28 (Mar. 2, 1976) 83 I.D. 59

Discrimination

Hearings

Pleading

Where an applicant for review seeks relief only for an allegedly discriminatory discharge, an allegation to the effect that an act which preceded such discharge was discriminatory states a conclusion of law which is mere

ENTITLEMENT OF MINERS--Continued

Discrimination--Continued

Hearings--Continued

Pleading--Continued

surplusage. 30 U.S.C. § 820(b)(2) (1970). 43 CFR 4.562(d).

Steve Shapiro v. Bishop Coal Company, 6 IBMA 28 (Mar. 2, 1976) 83 I.D. 59

EVIDENCE

Adverse Witnesses

In a civil penalty proceeding brought pursuant to sec. 109(a)(3) of the Act, it is entirely proper for the Mining Enforcement and Safety Administration to call to the stand and examine the adverse party's principal witness and to rely upon such testimony in an effort to make out a prima facie case.

Karst-Robbins Coal Co., Inc., 6 IBMA 78 (Mar. 22, 1976) 83 I.D. 88

Credibility of Testimony

Where substantial evidence of record corroborates the finding of the trial judge that the testimony of the witness for one party is more credible than testimony of the witnesses for another party, the Board, on appeal, will not disturb such finding of credibility.

Mountaineer Coal Company, 6 IBMA 308 (Sept. 24, 1976) 83 I.D. 341

Photographs

Probative Weight

Where photographs are introduced in evidence, particularly for the purpose of showing shade and color, and the party introducing such evidence fails to establish the accuracy thereof in terms of being true representations of the shade and color of the subject of such photographs, it is proper for the trier of fact to give no probative weight to such evidence.

Mountaineer Coal Company, 6 IBMA 308 (Sept. 24, 1976) 83 I.D. 341

Relevancy

Where an Administrative Law Judge refuses to accord probative value to certain admitted evidence on the ground that such evidence is irrelevant, he errs when his conclusion of irrelevancy is based upon mere presumption and surmise without evidentiary foundation.

Mary E. Coal Company, Inc., 7 IBMA 98 (Nov. 24, 1976) 83 I.D. 579

HEARINGS

Abuse of Discretion

An Administrative Law Judge does not abuse his discretion by entering a default against an operator for failure to appear at a scheduled hearing after waiting for 38 minutes, and where the operator offers no excuse on the day scheduled for hearing for its tardiness but on the next day explains to the judge that the delay was due to "unforeseen traffic conditions."

Rushton Mining Company, 6 IBMA 221 (June 29, 1976) 83 I.D. 256

Notice and Service

An operator is given fair notice of the type and number of violations charged where an order of withdrawal specifically enumerates conditions and alleges that each such condition is a violation of a specific mandatory safety standard.

Clinchfield Coal Company, 6 IBLA 319 (Sept. 27, 1976) 83 I.D. 350

Pleading

The acceptance by the Administrative Law Judge of an answer to an order to show cause indicating the operator's desire for hearing and the subsequent issuance of a notice scheduling a hearing relieve the operator of the obligation to file an additional answer, and matters set forth in the Petition for Assessment of Civil Penalty are deemed to have been generally denied by the operator.

Rushton Mining Company, 6 IBMA 221 (June 29, 1976) 83 I.D. 256

Powers of Administrative Law Judges

Where an individual complied with the "self-certification" requirements of the regulations, actions by an Administrative Law Judge in determining that an individual was ineligible to practice before Department and by the Board of Mine Operations Appeals to continue further consideration of the appeal pending a decision on the issue by the Solicitor, were unauthorized since the denial of an individual's right to practice before the Department in these circumstances constituted a disciplinary action which is within the sole authority of the Solicitor to adjudicate; therefore, the matter should have been referred to the Solicitor at the outset and the appeal should not have been delayed without the express approval of the Solicitor.

Final Decision of the Solicitor in the Matter of the Eligibility of Mr. James R. Kyper to Represent Eastern Associated Coal Corporation and Affinity Mining Company Before the Department of the Interior, M-36883 (Feb. 9, 1976) 83 I.D. 131

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

HEARINGS--Continued

Powers of Administrative Law Judges--Continued

The authority of an Administrative Law Judge to issue show cause orders pursuant to 43 CFR 4.544(b) necessarily implies the authority to consider whether a response is adequate in showing cause why a default decision should not be entered against the respondent.

Associated Drilling, Inc., 6 IBMA 153 (May 27, 1976) 83 I.D. 220

An Administrative Law Judge may sequester witnesses upon proper motion, but he may not generally preclude an attorney from consulting with a willing witness. 43 CFR 4.582.

In a case, where the record shows that an Administrative Law Judge has clearly and grossly abused his discretion to the prejudice of both parties by undue and improper interrogation of witnesses and unnecessary interference in the presentation of a case, the Board may grant a new hearing before another trier of fact. 43 CFR 4.603.

Jack W. Parks v. L & M Coal Corporation, 7 IBMA 172 (Dec. 23, 1976) 83 I.D. 710

Summary Decisions

Where no party has moved for summary decision under 43 CFR 4.590, it is error for an Administrative Law Judge to use that regulation as a basis for proceeding to a decision in the absence of a hearing.

Island Creek Coal Company and Virginia Pocahontas Company, 7 IBMA 1 (Sept. 30, 1976) 83 I.D. 419

Waiver

Where a party to a proceeding has requested a hearing and there has been no unequivocal waiver thereof in writing, a hearing is required to be conducted by the provisions of 43 CFR 4.588, and failure to do so constitutes reversible error.

Island Creek Coal Company and Virginia Pocahontas Company, 7 IBMA 1 (Sept. 30, 1976) 83 I.D. 419

IMMINENT DANGER

Proximate Peril

A condition of float coal dust accumulations in energized electrical rectifier and starting boxes where arcing and sparking normally occur constitutes an imminent danger. 30 U.S.C. § 814 (1970).

Pocahontas Fuel Company, 6 IBMA 14 (Feb. 4, 1976) 83 I.D. 37

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

INCOMBUSTIBLE DUST PROGRAMS

Evidence

Sufficiency

The unchallenged testimony of an inspector that he followed instructions [departmental directives] pertaining to the gathering and packaging of dust samples, together with a laboratory analysis of dust samples, unchallenged by the operator, showing insufficient incombustible content, constitutes sufficient evidence to establish a violation of 30 CFR 75.403.

Mary E. Coal Company, Inc., 7 IBMA 98 (Nov. 24, 1976) 83 I.D. 579

MANDATORY HEALTH STANDARDS

Bathhouse and Changeroom Facilities

A violation of 30 CFR 75.1712-2, requiring that bathing and change-room facilities be provided in a central location convenient to all the miners where such facilities serve the miners of more than one mine, is not proved when the evidence shows that the average distance from the six mines served is 2.1 miles and the portal of the mine farthest from such facilities is only 1.1 miles farther than the portal of the nearest mine.

Carbon Fuel Company, 6 IBMA 20 (Feb. 20, 1976) 83 I.D. 39

MANDATORY SAFETY STANDARDS

Permissibility

Switches on Electric Face Equipment

Failure to maintain the reset mechanism on electric face equipment in operative condition is not a violation of an operator's obligation under 30 CFR 75.505 to maintain electric face equipment in permissible condition.

Eastern Associated Coal Corporation (On Reconsideration), 7 IBMA 14 (Sept. 30, 1976) 83 I.D. 425

Roof Control Plans

Generally

The obligation to "carry out" the provisions of an adopted, approved, and effective roof control plan is a mandatory safety standard. The failure to "carry out" particular provisions of the plan is a violation of such standard. 30 U.S.C. §§ 802(l), 826(a) (1970).

In the Matter of Affinity Mining Company (Petitioner) v. MESA, UMWA (Respondents) (On Reconsideration), 6 IBMA 100 (Mar. 31, 1976) 83. I.D. 108

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

MANDATORY SAFETY STANDARDS--Continued

Roof Control Plans--Continued

Evidence

Where the undisputed evidence adduced by MESA established that the operator failed to have crossbars installed when hillseams are encountered as required by the roof control plan, the Mining Enforcement and Safety Administration made out a prima facie case of violation of sec. 302(a) of the Act. 30 U.S.C. § 862(a). 30 CFR 75.200

Dixie Fuel Company, Grays Knob Coal Company, 7 IBMA 71 (Nov. 9, 1976) 83 I.D. 551

Spalling Ribs

Neither the fact that a condition, such as spalling ribs, is difficult to control nor the fact that such a condition is a natural condition of the mining process precludes an inspector from properly issuing a notice of violation of 30 CFR 75.200. 30 U.S.C. § 862(a).

Dixie Fuel Company, Grays Knob Coal Company, 7 IBMA 71 (Nov. 9, 1976) 83 I.D. 551

MODIFICATION OF APPLICATION OF MANDATORY SAFETY STANDARDS

Generally

A petition for modification alleging in substance an erroneous interpretation of a mandatory safety standard by MESA does not state a claim upon which relief can be granted under sec. 301(c) of the Act. 30 U.S.C. § 861(c) (1970).

Itmann Coal Co., 6 IBMA 121 (Apr. 15, 1976) 83 I.D. 175

A petition for modification of the application of a regulation establishing criteria for approval of individual mine ventilation plans does not state a claim upon which relief can be granted under sec. 301(c) of the Act because such regulation is not a mandatory safety standard. 30 U.S.C. §§ 802(l), 861(c) (1970).

Old Ben Coal Co., 6 IBMA 163 (May 27, 1976) 83 I.D. 225

A Petition for Modification of the application of 30 CFR 75.1405 alleging that the mandatory standard does not apply to rubber-rail equipment which operates both on and off track fails to state a claim for which relief can be granted under sec. 301(c) of the Act. 30 U.S.C. § 861(c) (1970).

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

MODIFICATION OF APPLICATION OF MANDATORY SAFETY STANDARDS--Continued

Generally--Continued

An Administrative Law Judge lacks discretion under sec. 301(c) to grant an operator purely declaratory relief sought in a Petition for Modification of the application of a mandatory safety standard. 30 U.S.C. § 861(c) (1970).

Oneida Mining Company, North American Coal Corporation, The Helen Mining Company, The Florence Mining Company, 6 IBMA 343 (Sept. 29, 1976) 83 I.D. 405

Automatic Couplers

Where the evidence of record shows that a link aligner may not always be immediately available, as opposed to the ever-present automatic coupler, presenting an opportunity for a miner to position himself between mine cars to perform a coupling, a Petition for Modification to permit the use of link aligners must be denied as not providing the same degree of safety as automatic couplers in all respects and at all times.

Where the proponent of a Petition for Modification of the application of 30 CFR 75.1405 is unable to rebut evidence produced by MESA based upon measurements and calculations showing automatic couplers to be suitable for use in the subject mine with no diminution of safety to the miners, the Petition will be denied.

Canterbury Coal Company, 6 IBMA 276 (Sept. 13, 1976) 83 I.D. 325

Roof Control Plans

The application of particular provisions of a roof control plan is subject to modification under sec. 301(c) of the Act. 30 U.S.C. § 861(c) (1970).

In the Matter of Affinity Mining Company (Petitioner) v. MESA, UMWA (Respondents) (On Reconsideration), 6 IBMA 100 (Mar. 31, 1976) 83 I.D. 108

NOTICES OF VIOLATION

Abatement

Respirable dust samples required to be taken pursuant to 30 CFR 70.250 may be taken during any shift so long as the miner whose work atmosphere is being sampled is employed in his usual occupation.

United States Steel Corporation, 7 IBMA 109 (Nov. 29, 1976) 83 I.D. 584

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

NOTICES OF VIOLATION--Continued

Party to be Charged

Where the miners employed by an operator of a coal mine are exposed to a safety hazard created by the lack of required backup alarms on delivery trucks owned by a seller of coal and where the operator is in a realistic position to prevent or abate the violation with a minimum of due diligence, such operator is a proper party to be charged with the violation. 30 CFR 77.410.

Armco Steel Corp., 6 IBMA 64 (Mar. 15, 1976) 83 I.D. 77

Reasonableness of Time

In a review proceeding, an Administrative Law Judge abuses his discretion under sec. 105(b) by vacating a notice of violation on the ground that the time originally fixed therein is unreasonably short because such action is inconsistent with the Secretary's statutory obligation under sec. 109 to assess a civil penalty for every violation of the mandatory health or safety standards. 30 U.S.C. § 815(b) (1970).

Old Ben Coal Company, 6 IBMA 294 (Sept. 16, 1976) 83 I.D. 335

Where a pattern of granting extensions of time is established to permit step-by-step accomplishment of an approved noise-control plan, an additional extension of time granted in conformance with such pattern will not held by the Board to be unresonable.

Kanawha Coal Company, 7 IBMA 158 (Dec. 21, 1976) 83 I.D. 704

Sufficiency

Where a notice of violation does not clearly indicate which of two possible standards is alleged to be violated and an inspector's testimony supports neither the written description nor the section of the regulations cited, such notice is properly vacated.

Tilden Coal Company, 7 IBMA 57 (Oct. 15, 1976) 83 I.D. 515

PENALTIES

Admissibility of Previous Violations

A violation for which a penalty is paid by an operator which is less than the amount originally assessed by MESA is admissible as evidence in considering an operator's history of previous violations. 30 U.S.C. § 819(a)(1) (1970).

Peggs Run Coal Company, Inc., 6 IBMA 212 (June 28, 1976) 83 I.D. 245

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

PENALTIES--Continued

Amounts

An obvious roof control violation which could have been discovered and abated by the operator, and which results in a roof fall injuring a miner, warrants a sizable penalty appropriate to the circumstances and commensurate with the deterrent intent of the Act.

Island Creek Coal Company, 6 IBMA 240 (June 30, 1976) 83 I.D. 264

Inasmuch as sec. 109 of the Act mandates the assessment of a civil penalty where a violation has been found to exist, it is error to assess a zero penalty in such circumstances because a zero penalty is no penalty. 30 U.S.C. § 819(a) (1970).

R. M. Coal Company, 7 IBMA 64 (Oct. 27, 1976) 83 I.D. 526

Existence of Violation

Evidence

A fact may be inferred from circumstantial evidence, and such fact may be the basis of further inference leading to the ultimate or sought for fact.

Where an inspector describes a condition alleging that a violation occurred during the working shift immediately preceded the shift in which the inspection is made, a prima facie case that the violation occurred during the preceding shift may be made out by means of an inference drawn from facts established by direct evidence, provided that such inference is more probable than any other inference which can be drawn from such facts.

Rushton Mining Company, 6 IBMA 329 (Sept. 29, 1976) 83 I.D. 399

RESPIRATORY DUST PROGRAM

Generally

A notice of violation of 30 CFR 70.100(a) must be vacated where an operator overcomes MESA's prima facie case by establishing as an affirmative defense by a preponderance of the evidence that it was cited for concentrations of dust which are not wholly "respirable" within the meaning of the Act and regulations. 30 U.S.C. § 878(k) (1970) and 30 CFR 70.2(i).

Eastern Associated Coal Corporation (On Reconsideration), 7 IBMA 14 (Sept. 30, 1976) 83 I.D. 425

Coal dust particulates in excess of 5 microns in size are not "respirable dust" as a matter

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

RESPIRATORY DUST PROGRAM--Continued

Generally--Continued

of law under 30 U.S.C. § 878(k) (1970) and 30 CFR 70.2(i).

Eastern Associated Coal Corporation (On Reconsideration En Banc), 7 IBMA 133 (Dec. 20, 1976) 83 I.D. 695

REVIEW OF NOTICES AND ORDERS

Generally

The validity of the precedent notice and order is not in issue in a proceeding for review of an Order of Withdrawal issued pursuant to sec. 104(c)(2) of the Act unless applications for review are filed within 30 days of the issuance of the precedent notice and order (43 CFR 4.530(c)).

Zeigler Coal Company, 6 IBMA 182 (June 22, 1976) 83 I.D. 232

Dismissal of Applications

A representative of miners has a statutory and regulatory right to review of a notice of termination containing a finding of abatement as an incident to a timely filed application for review of a previous sec. 104(b) notice of violation in which such representative contends that such notice fixed a time for abatement that was unreasonable. 30 U.S.C. § 815 (1970), 43 CFR 4.1, 4.500, 4.530, 4.533.

An application for review of an original or modified sec. 104(b) notice of violation filed by a representative of miners does not become moot merely because MESA issues a notice of termination containing a finding of abatement. 30 U.S.C. § 815 (1970).

Affinity Mining Company (On Reconsideration), 6 IBMA 193 (June 25, 1976) 83 I.D. 236

SECRETARIAL ORDERS

Generally

An order signed by the Secretary which establishes enforcement policy is binding throughout the Department, and its validity is neither procedurally nor substantively subject to challenge at the administrative level.

Cowin and Company, Inc., 6 IBMA 351 (Sept. 29, 1976) 83 I.D. 409

UNAVAILABILITY OF EQUIPMENT, MATERIALS, OR QUALIFIED TECHNICIANS

Pleading and Proof

When a notice of violation or order of withdrawal is issued for failure to comply with a mandatory health or safety standard, there is

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

UNAVAILABILITY OF EQUIPMENT, MATERIALS, OR QUALIFIED TECHNICIANS--Continued

Pleading and Proof--Continued

a rebuttable presumption that required equipment, materials, and qualified technicians are available to the operator. 30 U.S.C. § 819(a)(1) (1970).

In a penalty proceeding involving an alleged failure to provide a methane monitor, the defense of unavailability of equipment is an affirmative defense which, to be sustained, must be pleaded and proved by the operator. 30 U.S.C. § 819(a)(1) (1970); 43 CFR 4.542.

P & P Coal Company, 6 IBMA 86 (Mar. 22, 1976) 83 I.D. 91

UNWARRANTABLE FAILURE

Notices of Violation

A violation of a mandatory standard is not "of such nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard" if it poses either a purely technical instance of noncompliance or a source of any injury which has only a remote or speculative chance of coming to fruition. 30 U.S.C. § 814(c)(1) (1970).

A notice of violation may be issued under sec. 104(c)(1) without regard for the seriousness or gravity of the injury likely to result from the hazard posed by the violation, that is, an inspector need not find a risk of serious bodily harm, let alone of death. 30 U.S.C. § 814(c)(1) (1970).

Alabama By-Products Corporation (On Reconsideration), 7 IBMA 85 (Nov. 23, 1976) 83 I.D. 574

VALIDITY OF REGULATIONS

The Board, as delegate of the Secretary, has not been empowered to entertain a challenge to the validity of regulations promulgated by the Secretary pursuant to sec. 508 of the Federal Coal Mine Health and Safety Act of 1969. 30 U.S.C. § 957 (1970); 43 CFR 4.1.

United Mine Workers of America v. Inland Steel Co., 6 IBMA 71 (Mar. 17, 1976) 83 I.D. 87

WITHDRAWAL ORDERS

Generally

A sec. 104(c)(2) withdrawal order is properly issued where it is shown that such order is based on a violation of a mandatory health or safety standard which is caused by the operator's unwarrantable failure to comply and no consideration need be given to whether the violation was of such a nature as could significantly and substantially contribute to

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

of the other parties in interest to the offer is not excused, nor is the Department estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease to the applicant on an offer which was deficient for the same reason.

Leon M. Flanagan, et al., 25 IBLA 269 (June 24, 1976)

An applicant for a private land exchange cannot benefit from the doctrine of equitable estoppel where no agent of the Government who was authorized to consummate the exchange falsely and materially misrepresented to or concealed material facts from appellant concerning the Government's position with respect to the proposed exchange.

Siesta Investments, Inc., 28 IBLA 118 (Nov. 15, 1976)

INTEREST IN LANDS

The regulations governing Departmental employees' rights to hold a direct or indirect interest in public lands must be construed in pari materia with the regulations governing qualification to hold a grazing lease under sec. 15 of the Taylor Grazing Act, 43 U.S.C. § 315m (1970). A non-employee may be disqualified from holding a lease by his business relationship with an employee if the issuance of the lease would create an interest in public land proscribed by regulation.

Donald E. and Nancy P. Janson (On Reconsideration), 23 IBLA 374 (Feb. 4, 1976)

MEMBERS OF CONGRESS

One of the functions of the Department of Justice is to construe the laws under which other Government Departments act, 28 U.S.C. § 512 (1970), and when the Department of Justice has advised the Department of the Interior that it has construed a conflict of interest statute affecting Members of Congress and has determined that it is permissible for the spouse of a member of Congress to hold a grazing lease for national resource lands under certain circumstances, that opinion is binding on this Department, and a grazing lease is properly issued when the applicant has satisfied the criteria set forth by the Department of Justice.

Joseph T. Kurkowski, 24 IBLA 58 (Feb. 23, 1976)

FEDERAL METAL AND NONMETALLIC MINE SAFETY ACT

IMMINENT DANGER WITHDRAWAL ORDERS

Dismissal

Allegations of invalidity ab initio with respect to an imminent danger withdrawal order

FEDERAL METAL AND NONMETALLIC MINE SAFETY ACT--Continued

IMMINENT DANGER WITHDRAWAL ORDERS--Continued

Dismissal--Continued

constitute a legally sufficient claim for relief under secs. 9 and 11 of the Act. 30 U.S.C. §§ 728, 730 (1970).

In the Matter of Kennecott Copper Corp. (Bingham Mine), 6 IBMA 288 (Sept. 15, 1976) 83 I.D. 329

Mootness

Abatement of a condition or practice which gave rise to a sec. 8(a) imminent danger withdrawal order does not render moot an application for review and annulment of such order under secs. 9 and 11 of the Act. 30 U.S.C. §§ 727(a), 728, 730 (1970).

In the Matter of Kennecott Copper Corp. (Bingham Mine), 6 IBMA 288 (Sept. 15, 1976) 83 I.D. 329

FISH AND WILDLIFE SERVICE

The issuance of sodium prospecting permits is discretionary with the Secretary of the Interior, and the Secretary may refuse to issue permits for lands withdrawn for wildlife purposes if the use of the lands for mineral prospecting and development activities would adversely affect the wildlife habitat.

Where the regulations and Departmental and BLM Manuals do not specifically state how disputes between the Fish and Wildlife Service and the Bureau of Land Management over issuing sodium prospecting permits for lands within wildlife refuge areas are to be resolved, but the Departmental manuals indicate that such decisions are to be made by the Secretary and the BLM Manual directs that such applications be forwarded to the Washington Office, a decision of a State Office rejecting an application for a sodium prospecting permit will be set aside and the case remanded for processing in accordance with the Departmental and BLM Manuals.

Vernal E. Bess, et al., 27 IBLA 4 (Sept. 17, 1976)

GEOLOGICAL SURVEY

The Bureau of Land Management has no authority to make a determination of a known geothermal resources area; such authority rests with the Geological Survey.

Robert C. Harper, 24 IBLA 44 (Feb. 23, 1976)

Applications for phosphate prospecting permits are properly rejected by the Bureau of Land

GEOLOGICAL SURVEY--Continued

Management upon the basis of a determination by the Geological Survey that the lands applied for contain workable deposits of phosphate thus making the lands subject to the leasing provisions rather than the prospecting provisions of the Mineral Leasing Act. A review of the technical data relied upon by the Geological Survey in making its determination is not required where no evidence is submitted on appeal demonstrating error in that determination.

William F. Martin, 24 IBLA 271 (Mar. 30, 1976)

A determination by the United States Geological Survey that certain lands under a public sale application are valuable for various leasable minerals will not be disturbed in the absence of a clear showing by the applicant that such determination was improperly made.

The Kemmerer Coal Company, 26 IBLA 127 (July 30, 1976)

Where the Bureau of Land Management rejects a public sale application based on a determination by Geological Survey that certain lands encompassed by a public sale application contain workable coal deposits and Geological Survey's conclusion that the exercise of surface rights will unreasonably interfere with operations under the mineral leasing law, the case will be remanded for further consideration when the bare conclusion of the Geological Survey is unsupported by any facts and where there is a lack of evidence in the record to support such conclusion.

Edward H. Swartz, 27 IBLA 308 (Oct. 29, 1976)

GEOTHERMAL LEASES

GENERALLY

Where the reason given for the partial rejection of a noncompetitive geothermal lease application is that the Environmental Analysis Record has recommended against leasing the lands because they lie within an area associated with historic trails, and the records indicate that the State Office has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether the lands should be leased with protective stipulations.

Richard C. Hoefle, 24 IBLA 181 (Mar. 16, 1976)

Kirk Greene, 24 IBLA 262 (Mar. 29, 1976)

Land may properly be declared to be in a known geothermal resources area only upon a finding by the Geological Survey of sufficient competitive interest, where such interest, in the opinion of the Geological Survey, would engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated

GEOTHERMAL LEASES--Continued

GENERALLY--Continued

resources are good enough to warrant expenditures for that purpose.

Robert C. Harper, 24 IBLA 44 (Feb. 23, 1976)

It is proper to afford a geothermal lease applicant the benefit of a regulation, adopted after the filing of his application, absent the impairment of third party rights and adverse impact on the interests of the United States. Where a geothermal lease regulation requires the filing of a compliance bond as a condition precedent to issuance of a lease, and that regulation is amended during the pendency of an application to require such a bond only as a condition precedent to entry on the leased lands, the holder of the application may be granted a lease under the amended requirement, if all else be regular.

Christopher A. Marks, 26 IBLA 84 (July 19, 1976)

Where an issue which gives rise to an appeal is mooted during the pendency of the appeal, the appeal will not be dismissed where the priority of the application is dependent upon the correctness of the original decision.

Where an oil and gas lease offeror files a partial withdrawal of lands described in her application during the pendency of an appeal from a decision rejecting her offer in its entirety, the withdrawal is effective eo instanti when filed, and may not be ignored simply on the basis that it was permissible to have included those lands in the application.

Caroline L. Hunt, 26 IBLA 218 (Aug. 17 1976)

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive geothermal steam leases and the Secretary is entitled to rely on its reasoned analysis.

Getty Oil Company, 27 IBLA 269 (Oct. 26, 1976)

ACREAGE LIMITATIONS

Where an application for a noncompetitive geothermal steam lease includes 2,598.98 acres of land, thereby exceeding the 2,560 acre limitation by 38.98 acres and the applicant, under 43 CFR 3210.2-1(c) is required to include all available lands within a section, the rule of approximation operates to allow the excess when the excess is smaller than the amount by which the area would be less than 2,560 acres if the irregular subdivision, in this case a section, were excluded.

Caroline L. Hunt, 26 IBLA 218 (Aug. 17, 1976)

The special rule of approximation for geothermal lease offers is applied by subtracting

GEOTHERMAL LEASES--Continued

ACREAGE LIMITATIONS--Continued

from the total acreage of the offer the acreage of the irregular subdivision which caused the excess acreage. Where a geothermal lease offer describes four complete sections and the area embraced in the application exceeds the acreage limit because one or more of the sections is irregular, the offer may be considered if deletion of the irregular section (or one of them if there is more than one) would cause an acreage deficiency (acreage limit less acreage described in the offer) greater than the excess acreage resulting from inclusion of the section.

Nelson B. Hunt, 27 IBLA 365 (Nov. 4, 1976)

APPLICATIONS

Generally

When the Bureau of Land Management rejects geothermal lease offers on the mistaken basis that the lands embraced within the offers are situated within a particular critical natural area excluded from leasing, but in fact the lease offers are for lands not within that critical natural area but may be in another, the cases must be remanded for further consideration because the decisions fail to disclose a proper basis for rejection of the lease offers.

Kirk Greene, 24 IBLA 113 (Mar. 1, 1976)

When the Bureau of Land Management rejects geothermal lease offers on the basis that the lands embraced within the offers are situated within a critical natural area excluded from leasing, but the record indicates the basis for rejection may be that the lands applied for are associated with historic trails where leasing activity has been approved subject to protective stipulations, the decisions will be set aside and the cases remanded for further clarification and consideration by the Bureau to determine whether the lands should be leased subject to protective stipulations.

Christian F. Murer, 24 IBLA 383 (Apr. 29, 1976)

Where an issue which gives rise to an appeal is mooted during the pendency of the appeal, the appeal will not be dismissed where the priority of the application is dependent upon the correctness of the original decision.

Where an application for a noncompetitive geothermal steam lease includes 2,598.98 acres of land, thereby exceeding the 2,560 acre limitation by 38.98 acres and the applicant, under 43 CFR 3210.2-1(c) is required to include all available lands within a section, the rule of approximation operates to allow the excess when the excess is smaller than the amount by which the area would be less than 2,560 acres if the irregular subdivision, in this case a section, were excluded.

GEOTHERMAL LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where an oil and gas lease offeror files a partial withdrawal of lands described in her application during the pendency of an appeal from a decision rejecting her offer in its entirety, the withdrawal is effective eo instanti when filed, and may not be ignored simply on the basis that it was permissible to have included those lands in the application.

Caroline L. Hunt, 26 IBLA 218 (Aug. 17, 1976)

A decision by the Bureau of Land Management to refrain from leasing certain lands for geothermal resources will be upheld when the record shows the decision to be a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decision is shown.

When the reason given for the rejection of noncompetitive geothermal lease applications is that the lands lie within an area associated with historic trails, and the records indicate that the Bureau of Land Management has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether these lands should be leased with protective stipulations.

When the reason given by the Bureau of Land Management for the rejection of noncompetitive geothermal lease applications is that the lands lie within a critical natural area, but the Environmental Analysis Record recommendations to exclude lands from leasing have not been uniformly followed and the Record itself describes various protective measures which would mitigate adverse environmental impact, the decisions will be remanded to determine whether these lands should be leased with protective stipulations.

When the Bureau of Land Management rejects geothermal lease applications on the mistaken basis that the lands are situated within a particular critical natural area excluded from leasing, the cases must be remanded for further consideration because the decisions fail to disclose a proper basis for rejection.

Southern Union Production Company, 27 IBLA 54 (Sept. 23, 1976)

Where a noncompetitive geothermal lease application describes all the lands in a certain section by legal subdivisions and the section contains an available unsurveyed lake bed, the lease offer will be rejected as to such section because of the applicant's failure to describe the unsurveyed lake bed by metes and bounds as required by 43 CFR 3203.4(b).

Lamar Hunt, 27 IBLA 397 (Nov. 5, 1976)

GEOTHERMAL LEASES--Continued

BONDS

It is proper to afford a geothermal lease applicant the benefit of a regulation, adopted after the filing of his application, absent the impairment of third party rights and adverse impact on the interests of the United States. Where a geothermal lease regulation requires the filing of a compliance bond as a condition precedent to issuance of a lease, and that regulation is amended during the pendency of an application to require such a bond only as a condition precedent to entry on the leased lands, the holder of the application may be granted a lease under the amended requirement, if all else be regular.

Christopher A. Marks, 26 IBLA 84 (July 19, 1976)

COMPETITIVE LEASES

Sec. 4 of the Geothermal Steam Act of 1970 authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a known geothermal resources area, whether the KGRA determination is made before or after a noncompetitive application is filed.

Anadarko Production Company, 24 IBLA 132 (Mar. 4, 1976)

Caroline L. Hunt, 26 IBLA 178 (Aug. 9, 1976)

Sec. 4 of the Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands within a known geothermal resource area under regulations formulated by the Secretary of the Interior. Where the Department has promulgated regulations pursuant to this section which provides the Secretary's authorized officer with the reserved right to reject any and all bids submitted for a competitive geothermal lease sale, and that reserved right is publicized in the sale notice, the Government is not obligated to accept any bid which might be considered inadequate.

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive geothermal steam leases and the Secretary is entitled to rely on its reasoned analysis.

Getty Oil Company, 27 IBLA 269 (Oct. 26, 1976)

DISCRETION TO LEASE

Where the reason given for the partial rejection of a noncompetitive geothermal lease application is that the Environmental Analysis Record has recommended against leasing the lands because they lie within an area associated with historic trails, and the records indicate that the State Office has approved leasing similar areas subject to

GEOTHERMAL LEASES--Continued

DISCRETION TO LEASE--Continued

protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether the lands should be leased with protective stipulations.

Richard C. Hoefle, 24 IBLA 181 (Mar. 16, 1976)

Kirk Greene, 24 IBLA 262 (Mar. 29, 1976)

An exercise of the Secretary's discretion to refrain from issuing a geothermal lease for a given tract of land is neither arbitrary nor capricious where the decision is arrived at after detailed study of environmental factors and is based upon considerations of public interest. In such a situation, the Board will not ordinarily substitute its independent judgment for that of the technical experts employed by the Department to make recommendations within their field of expertise.

Eason Oil Company, Robert G. Lynn, 24 IBLA 221 (Mar. 24, 1976)

A decision by the Bureau of Land Management to refrain from leasing certain lands for geothermal resources will be upheld when the record shows the decision to be a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decision is shown.

When the reason given for the rejection of noncompetitive geothermal lease applications is that the lands lie within an area associated with historic trails, and the records indicate that the Bureau of Land Management has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether these lands should be leased with protective stipulations.

When the reason given by the Bureau of Land Management for the rejection of noncompetitive geothermal lease applications is that the lands lie within a critical natural area, but the Environmental Analysis Record recommendations to exclude lands from leasing have not been uniformly followed and the Record itself describes various protective measures which would mitigate adverse environmental impact, the decisions will be remanded to determine whether these lands should be leased with protective stipulations.

When the Bureau of Land Management rejects geothermal lease applications on the mistaken basis that the lands are situated within a particular critical natural area excluded from leasing, the cases must be remanded for further consideration because the decisions fail to disclose a proper basis for rejection.

Southern Union Production Company, 27 IBLA 54 (Sept. 23, 1976)

GEOTHERMAL LEASES--Continued

ENVIRONMENTAL PROTECTION

Generally

Where the reason given for the partial rejection of a noncompetitive geothermal lease application is that the Environmental Analysis Record has recommended against leasing the lands because they lie within an area associated with historic trails, and the records indicate that the State Office has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether the lands should be leased with protective stipulations.

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When the reason given for the rejection of noncompetitive geothermal lease applications is that the lands lie within an area associated with historic trails, and the records indicate that the Bureau of Land Management has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether these lands should be leased with protective stipulations.

When the reason given by the Bureau of Land Management for the rejection of noncompetitive geothermal lease applications is that the lands lie within a critical natural area, but the Environmental Analysis Record recommendations to exclude lands from leasing have not been uniformly followed and the Record itself describes various protective measures which would mitigate adverse environmental impact, the decisions will be remanded to determine whether these lands should be leased with protective stipulations.

When the Bureau of Land Management rejects geothermal lease applications on the mistaken basis that the lands are situated within a particular critical natural area excluded from leasing, the cases must be remanded for further consideration because the decisions fail to disclose a proper basis for rejection.

Southern Union Production Company, 27 IBLA 54 (Sept. 23, 1976)

KNOWN GEOTHERMAL RESOURCES AREA

The Bureau of Land Management has no authority to make a determination of a known geothermal resources area; such authority rests with the Geological Survey.

Land may properly be declared to be in a known geothermal resources area only upon a finding by the Geological Survey of sufficient competitive interest, where such interest, in the opinion of the Geological Survey, would engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated resources are good enough to warrant expenditures for that purpose.

KNOWN GEOTHERMAL RESOURCES AREA--Continued

It is unnecessary for the Secretary to consult with men experienced in the exploitation of geothermal steam to make a determination of a known geothermal resources area. It is sufficient that he entertain the opinion that any or all of the elements delineated in 30 U.S.C. § 1001(e) (1970), would engender a belief in such men that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

Robert C. Harper, 24 IBLA 44 (Feb. 23, 1976)

Sec. 4 of the Geothermal Steam Act of 1970 authorizes competitive bidding as the sole basis for issuance of geothermal resources leases for lands determined to be within a known geothermal resources area, whether the KGRA determination is made before or after a noncompetitive application is filed.

Anadarko Production Company, 24 IBLA 132 (Mar. 4, 1976)

Caroline L. Hunt, 26 IBLA 178 (Aug. 9, 1976)

LANDS SUBJECT TO

Where the reason given for the partial rejection of a noncompetitive geothermal lease application is that the Environmental Analysis Record has recommended against leasing the lands Because they lie within an area associated with historic trails, and the records indicate that the State Office has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether the lands should be leased with protective stipulations.

Richard C. Hoefle, 24 IBLA 181 (Mar. 16, 1976)

Kirk Greene, 24 IBLA 262 (Mar. 29, 1976)

When the Bureau of Land Management rejects geothermal lease offers on the basis that the lands embraced within the offers are situated within a critical natural area excluded from leasing, but the record indicates the basis for rejection may be that the lands applied for are associated with historic trails where leasing activity has been approved subject to protective stipulations, the decisions will be set aside and the cases remanded for further clarification and consideration by the Bureau to determine whether the lands should be leased subject to protective stipulations.

Christian F. Murer, 24 IBLA 383 (Apr. 29, 1976)

NONCOMPETITIVE LEASES

Sec. 4 of the Geothermal Steam Act of 1970 authorizes competitive bidding as the sole

GEOTHERMAL LEASES--Continued

NONCOMPETITIVE LEASES--Continued

basis for issuance of geothermal resources leases for lands determined to be within a known geothermal resources area, whether the KGRA determination is made before or after a noncompetitive application is filed.

Anadarko Production Company, 24 IBLA 132 (Mar. 4, 1976)

Caroline L. Hunt, 26 IBLA 178 (Aug. 9, 1976)

Where an application for a noncompetitive geothermal steam lease includes 2,598.98 acres of land, thereby exceeding the 2,560 acre limitation by 38.98 acres and the applicant, under 43 CFR 3210.2-1(c) is required to include all available lands within a section, the rule of approximation operates to allow the excess when the excess is smaller than the amount by which the area would be less than 2,560 acres if the irregular subdivision, in this case a section, were excluded.

Caroline L. Hunt, 26 IBLA 218 (Aug. 17, 1976)

Where a noncompetitive geothermal lease application describes all the lands in a certain section by legal subdivisions and the section contains an available unsurveyed lake bed, the lease offer will be rejected as to such section because of the applicant's failure to describe the unsurveyed lake bed by metes and bounds as required by 43 CFR 3203.4(b).

Lamar Hunt, 27 IBLA 397 (Nov. 5, 1976)

GRAZING AND GRAZING LANDS

Improvement of land by fencing, and use as horse pasture, constitutes agricultural use which does not qualify as "trade, manufacture, or other productive industry" within the meaning of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970), regardless of the type of business in connection with which the pasturage is desired.

Evelyn M. Bunch, 25 IBLA 44 (May 13, 1976)

GRAZING LEASES

GENERALLY

The regulations governing Departmental employees' rights to hold a direct or indirect interest in public lands must be construed in pari materia with the regulations governing qualification to hold a grazing lease under sec. 15 of the Taylor Grazing Act, 43 U.S.C. § 315m (1970). A non-employee may be disqualified from holding a lease by his business relationship with an employee if the issuance of the lease would create an interest in public land proscribed by regulation.

Donald E. and Nancy P. Janson (On Reconsideration), 23 IBLA 374 (Feb. 4, 1976)

GRAZING LEASES--Continued

GENERALLY--Continued

One of the functions of the Department of Justice is to construe the laws under which other Government Departments act, 28 U.S.C. § 512 (1970), and when the Department of Justice has advised the Department of the Interior that it has construed a conflict of interest statute affecting Members of Congress and has determined that it is permissible for the spouse of a Member of Congress to hold a grazing lease for national resource lands under certain circumstances, that opinion is binding on this Department, and a grazing lease is properly issued when the applicant has satisfied the criteria set forth by the Department of Justice.

Joseph T. Kurkowski, 24 IBLA 58 (Feb. 23, 1976)

A decision renewing a sec. 15 grazing lease and rejecting a conflicting application, rendered in compliance with the standard prescribed by 43 CFR 4121.2-1(d)(2), will not be overturned in the absence of convincing reasons that the award is not warranted.

Where conflicting applications have been filed for a sec. 15 grazing lease and proper range management can be obtained from either applicant, and where both have an equal need for the land, the applicant seeking a renewal based on historical use generally will be favored.

Doyr Cornelison, 24 IBLA 155 (Mar. 15, 1976)

A determination by a District Manager of the grazing capacity of lands offered for a sec. 15 grazing lease will not be overturned in the absence of a clear showing of error. The burden of proof is upon the party challenging such determination to show that the decision is erroneous or that he has not been dealt with fairly.

Kaser Brothers, 24 IBLA 265 (Mar. 29, 1976)

A grazing lease is properly canceled because of the lessees' loss of control of the lands which were recognized as the basis of the preference right to the lease.

W. Doyle Wood, Jane L. Wood, 25 IBLA 261 (June 23, 1976)

An appeal from a decision of the Bureau of Land Management rejecting a grazing lease application and approving a conflicting application will not be summarily dismissed for failure to serve an adverse party who is not specifically designated as such in the decision appealed from. A decision of the Bureau of Land Management that a conflicting applicant has a preference right to the grazing lease will be affirmed when the applicant appealing fails to indicate any error in the decision.

Jack Sedman, 25 IBLA 277 (June 25, 1976)

GRAZING LEASES--Continued

GENERALLY--Continued

The regulations do not require that a lessee be given advance notice of nonrenewal of a grazing lease, nor is he entitled to rely upon an asserted assurance that he could have the lease as long as he desired.

It is proper to reject an application for renewal of a grazing lease where the land applied for is of such character that livestock grazing would be detrimental to other uses of the land such as wildlife and recreational uses.

Carl Peterson, 25 IBLA 328 (June 30, 1976)

The regulations do not provide for hearings as a matter of right on trespass violations involving a sec. 15 grazing lessee. For the Board of Land Appeals to exercise its discretion under 43 CFR 4.415 and order a hearing, the appellant must allege facts which, if proved, would entitle him to the relief sought.

Rodney Rolfe and Ronald J. Rolfe, 25 IBLA 331 (June 30, 1976) 83 I.D. 269

APPLICATIONS

In order to qualify as a preference-right applicant for a grazing lease on public land under sec. 15 of the Taylor Grazing Act, the applicant must own or lawfully occupy contiguous private land the proper use of which requires issuance of a grazing lease. Use or occupancy of contiguous public land under a sec. 15 grazing lease does not, by itself, qualify to establish a preference right over contiguous owners or lawful occupants of private lands. The fact an applicant once owned contiguous land and had a lease for the land is irrelevant in determining his present preference status.

Ralph O. Lorenz, 24 IBLA 1 (Feb. 4, 1976)

A decision renewing a sec. 15 grazing lease and rejecting a conflicting application, rendered in compliance with the standard prescribed by 43 CFR 4121.2-1(d)(2), will not be overturned in the absence of convincing reasons that the award is not warranted.

Where conflicting applications have been filed for a sec. 15 grazing lease and proper range management can be obtained from either applicant, and where both have an equal need for the land, the applicant seeking a renewal based on historical use generally will be favored.

Doyr Cornelison, 24 IBLA 155 (Mar. 15, 1976)

A grazing lease is properly denied when utilization of the leased property could have a substantial adverse effect on the environment and the Bureau of Land Management is under court order forbidding approval of such activity pending the preparation, filing and

GRAZING LEASES--Continued

APPLICATIONS--Continued

acceptance of an environmental impact statement.

Robert H. Jones, James E. Jones, 25 IBLA 93 (June 2, 1976)

The regulations do not require that a lessee be given advance notice of nonrenewal of a grazing lease, nor is he entitled to rely upon an asserted assurance that he could have the lease as long as he desired.

It is proper to reject an application for renewal of a grazing lease where the land applied for is of such character that livestock grazing would be detrimental to other uses of the land such as wildlife and recreational uses.

Carl Peterson, 25 IBLA 328 (June 30, 1976)

A District Manager's renewal of a grazing lease and the denial of a conflicting lease application will not be disturbed where both applicants have equal preference rights and the award was based upon regulatory criteria including historical use and needs of the applicants, and there are no convincing reasons warranting a change of lessee.

Where a District Manager renews a grazing lease and denies a conflicting application, he may require as a condition to continuance of the lease that the applicant for the lease renewal fence that portion of National Resource Lands adjacent to land leased by the conflicting applicant, in order to prevent trespass of the livestock belonging to the applicant for the lease renewal.

Wesley Leininger, 28 IBLA 93 (Nov. 15, 1976)

ASSIGNMENT

Where a reduction in the authorized use of land leased pursuant to sec. 15 of the Taylor Grazing Act is required in order to conform to the actual grazing capacity of the land, the full amount of that reduction must be imposed immediately rather than gradually. Where acceptance of the reduction is made a condition precedent for the approval of an assignment and for the issuance of a new lease, the assignee and prospective lessee will be held to have the same right to appeal the reduction as the original lessee.

Rube W. Evans, et al., 26 IBLA 15 (July 7, 1976)

CANCELLATION OR REDUCTION

A grazing lease issued pursuant to sec. 15 of the Taylor Grazing Act is properly canceled where the lessee has violated the terms of

GRAZING LEASES--Continued

CANCELLATION OR REDUCTION--Continued

the lease and the regulations by subleasing lands within the area of the lease.

Earl G. and Robert K. Murphy, 24 IBLA 124 (Mar. 2, 1976)

A grazing lease is properly canceled because of the lessees' loss of control of the lands which were recognized as the basis of the preference right to the lease.

W. Doyle Wood, Jane L. Wood, 25 IBLA 261 (June 23, 1976)

When the holder of a grazing lease is found to have violated regulations and the terms of his lease because his cattle have trespassed on Federal land, his lease may be canceled when lesser sanctions have proved to be of no effect or when the nature of the violation demands such severity. However, a decision canceling a lease will be set aside where the District Manager relied upon alleged trespasses of which the lessees had no notice and which occurred after a show cause notice had issued, and the case will be remanded for further proceedings.

Rodney Rolfe and Ronald J. Rolfe, 25 IBLA 331 (June 30, 1976) 83 I.D. 269

Where a reduction in the authorized use of land leased pursuant to sec. 15 of the Taylor Grazing Act is required in order to conform to the actual grazing capacity of the land, the full amount of that reduction must be imposed immediately rather than gradually. Where acceptance of the reduction is made a condition precedent for the approval of an assignment and for the issuance of a new lease, the assignee and prospective lessee will be held to have the same right to appeal the reduction as the original lessee.

While a determination of the grazing capacity of public lands will not ordinarily be overturned in the absence of a clear showing of error, a hearing may be ordered to resolve conflicts in the opinions of different experts where the lessee has made a substantial and believable offer of proof which, if true, would show error in the Bureau of Land Management's determination.

Rube W. Evans, et al., 26 IBLA 15 (July 7, 1976)

PREFERENCE RIGHT APPLICANTS

The regulations governing Departmental employees' rights to hold a direct or indirect interest in public lands must be construed in pari materia with the regulations governing qualification to hold a grazing lease under sec. 15 of the Taylor Grazing Act, 43 U.S.C. § 315m (1970). A non-employee may be disqualified from holding a lease by his business relationship with an employee if the issuance

GRAZING LEASES--Continued

PREFERENCE RIGHT APPLICANTS--Continued

of the lease would create an interest in public land proscribed by regulation.

Donald E. and Nancy P. Janson (On Reconsideration), 23 IBLA 374 (Feb. 4, 1976)

In order to qualify as a preference-right applicant for a grazing lease on public land under sec. 15 of the Taylor Grazing Act, the applicant must own or lawfully occupy contiguous private land the proper use of which requires issuance of a grazing lease. Use or occupancy of contiguous public land under a sec. 15 grazing lease does not, by itself, qualify to establish a preference right over contiguous owners or lawful occupants of private lands. The fact an applicant once owned contiguous land and had a lease for the land is irrelevant in determining his present preference status.

Ralph O. Lorenz, 24 IBLA 1 (Feb. 4, 1976)

A District Manager's renewal of a grazing lease and the denial of a conflicting lease application will not be disturbed where both applicants have equal preference rights and the award was based upon regulatory criteria including historical use and needs of the applicants, and there are no convincing reasons warranting a change of lessee.

Wesley Leininger, 28 IBLA 93 (Nov. 15, 1976)

RENEWAL

A decision renewing a sec. 15 grazing lease and rejecting a conflicting application, rendered in compliance with the standard prescribed by 43 CFR 4121.2-1(d)(2), will not be overturned in the absence of convincing reasons that the award is not warranted.

Doyr Cornelison, 24 IBLA 155 (Mar. 15, 1976)

A grazing lease is properly denied when utilization of the leased property could have a substantial adverse effect on the environment and the Bureau of Land Management is under court order forbidding approval of such activity pending the preparation, filing and acceptance of an environmental impact statement.

Robert H. Jones, James E. Jones, 25 IBLA 93 (June 2, 1976)

The regulations do not require that a lessee be given advance notice of nonrenewal of a grazing lease, nor is he entitled to rely upon an asserted assurance that he could have the lease as long as he desired.

It is proper to reject an application for renewal of a grazing lease where the land applied

GRAZING LEASES--Continued

RENEWAL--Continued

for is of such character that livestock grazing would be detrimental to other uses of the land such as wildlife and recreational uses.

Carl Peterson, 25 IBLA 328 (June 30, 1976)

Where a reduction in the authorized use of land leased pursuant to sec. 15 of the Taylor Grazing Act is required in order to conform to the actual grazing capacity of the land, the full amount of that reduction must be imposed immediately rather than gradually. Where acceptance of the reduction is made a condition precedent for the approval of an assignment and for the issuance of a new lease, the assignee and prospective lessee will be held to have the same right to appeal the reduction as the original lessee.

Rube W. Evans, et al., 26 IBLA 15 (July 7, 1976)

A District Manager's renewal of a grazing lease and the denial of a conflicting lease application will not be disturbed where both applicants have equal preference rights and the award was based upon regulatory criteria including historical use and needs of the applicants, and there are no convincing reasons warranting a change of lessee.

Where a District manager renews a grazing lease and denies a conflicting application, he may require as a condition to continuance of the lease that the applicant for the lease renewal fence that portion of National Resource Lands adjacent to land leased by the conflicting applicant, in order to prevent trespass of the livestock belonging to the applicant for the lease renewal.

Wesley Leininger, 28 IBLA 93 (Nov. 15, 1976)

GRAZING PERMITS AND LICENSES

GENERALLY

The term "grazing trespass" as used in the context of the Federal Range Code refers to the grazing of livestock on federal land without an appropriate license or permit or in violation of the terms and conditions of a license or permit, and not to any other special meaning ascribed under other laws and circumstances if inconsistent with this usage.

Although a respondent in a grazing license trespass hearing brought by the Bureau of Land Management has the right to be represented and aided by legal counsel, the Department has no duty or responsibility under the Constitution or the Administrative Procedure Act to provide such counsel for him.

Where a permittee was found to have committed repeated grazing trespasses, a fine of twice the commercial rate for foraging such animals was warranted in accordance with the regulations.

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

Where a grazing trespass is willful, grossly negligent, or repeated, disciplinary action in the form of suspension, reduction, or revocation, or denial of renewal of a grazing license or permit may be warranted. The regulatory factors, together with any mitigating circumstances, should be considered to determine the extent of the reduction or other disciplinary action.

Where the record of a grazing trespass case does not support a finding of mitigating or extenuating circumstances which would warrant changing a 20 percent reduction of a grazing permittee's active use qualifications for two grazing seasons, an Administrative Law Judge's order of such a reduction will be upheld.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976) 83 I.D. 185

Sanctions may not be imposed upon a grazing license pursuant to 43 CFR 4113.1 for certain alleged activity, unless such activity violates the terms or conditions of the license, the Taylor Grazing Act, a provision of 43 CFR Part 4110, or of any approved special rule.

The Secretary of the Interior or his delegate is not obligated to issue a grazing permit or license to an applicant; the issuance of such permits or licenses is committed to agency discretion; therefore, the Secretary may refuse to issue or to renew such license where the applicant, to enhance his grazing operation, has violated the terms of a statute or regulation prohibiting the killing of wildlife.

Renewal of a grazing license by a District Manager is not an abuse of discretion where the licensee is accused of illegally killing bald and golden eagles but no administrative hearing or judicial proceeding has yet been held to determine said licensee's guilt, where nonrenewal would not necessarily prevent the licensee from continuing to graze cattle pending disposition of such proceeding, and where the renewed license contains a provision allowing for its reduction, cancellation, or revocation in the event the licensee is found to have illegally killed eagles after an administrative or judicial proceeding.

Where the transferee of a grazing license has knowledge that such license might be in jeopardy because of illegal activities allegedly involving his transferor, a hearing to determine the guilt of the transferor would serve no useful purpose where the alleged principal culprit of the illegal activities is dead, all criminal charges against the transferor have been dismissed, and the transfer itself does not appear to have been made to escape the imposition of sanctions.

National Wildlife Federation (Appellant) v. Bolten Ranch, Inc. (Respondent), 24 IBLA 391 (May 3, 1976)

Where the number of cattle grazing on the Federal range exceeds the number allowed by license

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

and such excess is attributable solely to appellants' lack of control over their cattle and their lack of diligence in taking corrective action after being informed by the Bureau that the excess existed, a finding of willful trespass is warranted.

Cesar and Robert Siard, 26 IBLA 29 (July 8, 1976)

A District Manager's decision denying a grazing permit for 10 domestic horses, based on the fact that such a denial was required for proper range management and for protection of wild horses under the Wild Free-Roaming Horses and Burros Act, 85 Stat. 649-651, will be overruled where evidence presented at a hearing shows that granting the permit will not interfere with BLM's management of the wild horses under the Act.

Chester Baker, 26 IBLA 257 (Aug. 18, 1976)

A grazing permittee under sec. 3 of the Taylor Grazing Act does not have an absolute right to a permit renewal even though denial thereof will impair the value of his grazing unit which is pledged as security for a bona fide loan. The Department may refuse to renew such a permit when the public interest requires that the subject land be preserved from unnecessary injury, exchanged, disposed of, or reclassified for alternate public use. Similarly, if the Department may deny renewal outright under the above circumstances, the Department may renew such a permit for a lesser term than previously allowed pending completion of a Management Framework Plan and an Allotment Management Plan which are oriented not only to livestock grazing, but also to multiple use management which includes such concerns as land and water conservation, environmental protection, and other resource management objectives which can be achieved by reclassification of national resource lands and manipulation of grazing activity.

"Such permit" as used in sec. 3 of the Taylor Grazing Act, 43 U.S.C. § 315b (1970), providing for a renewal of a grazing permit does not mean only a permit identical with the terms and provisions of the original.

Where by final judgment a court has ordered that until an appropriate environmental impact statement is issued the BLM will issue authorization for livestock grazing only on an annual basis, a grazing permit can be renewed for only one year, even though the grazing unit has been pledged as security for a bona fide loan.

Hat Ranch, Inc., 27 IBLA 340 (Nov. 4, 1976)
83 I.D. 542

Where a range survey was conducted giving no consideration to annual forage growth and there is evidence that annual forage plants, at times, comprise up to 50 percent of the available forage; that cattle prefer annual

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

forage; that some annual forage was available even in the very dry survey year; annual forage growth should be considered in determining the carrying capacity of the federal range.

Rachel Ballow, Henry A. Rice and Sam J. Johnson, 28 IBLA 264 (Dec. 20, 1976)

ADJUDICATION

An application for grazing privileges based on newly discovered past grazing qualifications is properly rejected when licenses and permits have been issued for more than 3 consecutive years based on the allotment adjudication from which the application at issue seeks to deviate. 43 CFR 4115.2-1(e)(13)(i).

Phil J. Hillberry, 24 IBLA 283 (Mar. 31, 1976)

An adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with the provisions of the Federal Range Code for Grazing Districts, 43 CFR, Part 4110.

Rachel Ballow, Henry A. Rice and Sam J. Johnson, 28 IBLA 264 (Dec. 20, 1976)

APPEALS

Appellant's earlier failure to protest and appeal a decision rejecting his challenge to another grazier's base property commensurability rating, bars him from appealing a subsequent decision rejecting an application containing the same challenge.

A district manager's failure to hold an Advisory Board meeting on a grazing applicant's protest is mooted by a subsequent regulatory amendment terminating graziers' rights to an Advisory Board meeting on protests. In any event, the case would not be remanded for such a meeting when there is no prejudice because the applicant is foreclosed by the grazing regulations from the possibility of prevailing on his protest.

Phil J. Hillberry, 24 IBLA 283 (Mar. 31, 1976)

The right to appeal a decision of a District Manager is not necessarily limited to an applicant for a grazing license or permit, but may belong to "any other person" adversely affected by such decision. 43 CFR 4.470(a) and (b).

Any other person within the context of 43 CFR 4.470 includes one who has standing to protest or appeal a decision of the District Manager. An organization which alleges that one or more of its members has been adversely affected by such a decision may be considered

GRAZING PERMITS AND LICENSES--Continued

APPEALS--Continued

"any other person" within the meaning of the regulation.

National Wildlife Federation (Appellant) v. Bolten Ranch, Inc. (Respondent), 24 IBLA 391 (May 3, 1976)

BASE PROPERTY (LAND)

Generally

An application for grazing privileges based on newly discovered past grazing qualifications is properly rejected when licenses and permits have been issued for more than 3 consecutive years based on the allotment adjudication from which the application at issue seeks to deviate. 43 CFR 4115.2-1(e)(13)(i).

Phil J. Hillberry, 24 IBLA 283 (Mar. 31, 1976)

Ownership or Control

Under 43 CFR 4115.2-1(e)(8), loss of ownership or control of base property results in the termination of grazing privileges based on such property so that thereafter it is not possible to obtain a transfer of the privileges to other property owned by the lessee.

Charles Stewart, 26 IBLA 160 (Aug. 4, 1976)

Transfers

Under 43 CFR 4115.2-1(e)(8), loss of ownership or control of base property results in the termination of grazing privileges based on such property so that thereafter it is not possible to obtain a transfer of the privileges to other property owned by the lessee.

Charles Stewart, 26 IBLA 160 (Aug. 4, 1976)

CANCELLATION OR REDUCTION

Where a grazing trespass is willful, grossly negligent, or repeated, disciplinary action in the form of suspension, reduction, or revocation, or denial of renewal of a grazing license or permit may be warranted. The regulatory factors, together with any mitigating circumstances, should be considered to determine the extent of the reduction or other disciplinary action.

Where the record of a grazing trespass case does not support a finding of mitigating or extenuating circumstances which would warrant changing a 20 percent reduction of a grazing permittee's active use qualifications for two grazing seasons, an Administrative Law Judge's order of such a reduction will be upheld.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976)
83 I.D. 185

GRAZING PERMITS AND LICENSES--Continued

CANCELLATION OR REDUCTION--Continued

Under 43 CFR 4115.2-1(e)(8), loss of ownership or control of base property results in the termination of grazing privileges based on such property so that thereafter it is not possible to obtain a transfer of the privileges to other property owned by the lessee.

Even if it be established that the Department had not applied in other cases regulation 43 CFR 4115.2(e)(8), which requires termination of grazing privileges upon loss of ownership or control of base property, such failure to apply the regulation is not authority to further disregard the regulation.

Prior recognition of grazing privileges based on licensee's erroneous statement of ownership of base property does not estop the Department from canceling the privileges when it becomes aware of the facts.

Charles Stewart, 26 IBLA 160 (Aug. 4, 1976)

A grazing permittee under sec. 3 of the Taylor Grazing Act does not have an absolute right to a permit renewal even though denial thereof will impair the value of his grazing unit which is pledged as security for a bona fide loan. The Department may refuse to renew such a permit when the public interest requires that the subject land be preserved from unnecessary injury, exchanged, disposed of, or reclassified for alternate public use. Similarly, if the Department may deny renewal outright under the above circumstances, the Department may renew such a permit for a lesser term than previously allowed pending completion of a Management Framework Plan and an Allotment Management Plan which are oriented not only to livestock grazing, but also to multiple use management which includes such concerns as land and water conservation, environmental protection, and other resource management objectives which can be achieved by reclassification of national resource lands and manipulation of grazing activity.

Hat Ranch, Inc., 27 IBLA 340 (Nov. 4, 1976)
83 I.D. 542

RANGE SURVEYS

A determination by the Bureau of Land Management of the carrying capacity of a unit of the federal range based on a range survey will not be disturbed in the absence of positive evidence of error.

Rachel Ballow, Henry A. Rice and Sam J. Johnson, 28 IBLA 264 (Dec. 20, 1976)

TRESPASS

The term "grazing trespass" as used in the context of the Federal Range Code refers to the grazing of livestock on federal land without an appropriate license or permit or in violation of the terms and conditions of a license

GRAZING PERMITS AND LICENSES--Continued

TRESPASS--Continued

or permit, and not to any other special meaning ascribed under other laws and circumstances if inconsistent with this usage.

Where a permittee was found to have committed repeated grazing trespasses, a fine of twice the commercial rate for foraging such animals was warranted in accordance with the regulations.

Where a grazing trespass is willful, grossly negligent, or repeated, disciplinary action in the form of suspension, reduction, or revocation, or denial of renewal of a grazing license or permit may be warranted. The regulatory factors, together with any mitigating circumstances, should be considered to determine the extent of the reduction or other disciplinary action.

In determining whether grazing trespasses are "willful," intent sufficient to establish willfulness may be shown by proof of facts which objectively show that the circumstances do not comport with the notion that the trespasser acted in good faith or innocent mistake, or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Where the record of a grazing trespass case does not support a finding of mitigating or extenuating circumstances which would warrant changing a 20 percent reduction of a grazing permittee's active use qualifications for two grazing seasons, an Administrative Law Judge's order of such a reduction will be upheld.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976)
83 I.D. 185

Where the number of cattle grazing on the Federal range exceeds the number allowed by license and such excess is attributable solely to appellants' lack of control over their cattle and their lack of diligence in taking corrective action after being informed by the Bureau that the excess existed, a finding of willful trespass is warranted.

Where, in an effort to negotiate a compromise settlement of an alleged grazing trespass, a rancher concedes that the trespass occurred to the extent of a specific number of animal unit months of forage, but the proposed settlement is not consummated and the case goes to a hearing on its merits, evidence of the purported admissions made by the party during such negotiations must be excluded as not competent to show either the fact or the extent of the trespass alleged.

Where it has been determined that a grazing trespass on the Federal range is clearly willful, the value of the forage consumed shall be computed and assessed at $4 per animal-unit-month, or twice the commercial rate if such amount is higher. Where the commercial rate is $4.90, the assessment of damages shall be at the rate of $9.80 per animal-unit-month.

Cesar and Robert Siard, 26 IBLA 29 (July 8, 1976)

HEARINGS

(See also Administrative Procedure, Federal Coal Mine Health and Safety Act of 1969, Federal Metal and Nonmetallic Mine Safety Act, Geothermal Leases, Grazing Permits and Licenses, Indian Probate, Mining Claims, Rules of Practice, Surface Resources Act.)

A Native allotment applicant is not entitled to a hearing as a matter of right inasmuch as the issuance of an allotment is discretionary with the Secretary of the Interior. A hearing is not appropriate when there is no offer of proof which if established would impel a different legal conclusion.

Kathryn Eluska, 23 IBLA 284 (Jan. 12, 1976)

Under 43 CFR 2802.1-7(e), which provides that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Following a hearing under 43 CFR 2802.1-7, a decision increasing the charges for use and occupancy of a communication site is in error to the extent that the decision is based upon unspecified evidence not in the record and not made known to the user, and the decision must be set aside.

American Telephone and Telegraph Company, et al., 25 IBLA 341 (June 30, 1976)

The allowance of a request for a hearing before an Administrative Law Judge in a protest against a survey by the Bureau of Land Management is within the discretion of the Board of Land Appeals. There is no right to such a hearing.

R. A. Mikelson, 26 IBLA 1 (July 6, 1976)

The fact that assessment work has been performed on a mining claim does not estop the Government from determining the validity of a claim by proper proceedings giving adequate notice and an opportunity for a hearing where there are disputed determinative facts. However, where the claim was located after land has been withdrawn from mining, it is proper for the Bureau of Land Management to declare a claim null and void ab initio without a hearing.

Roy R. Cummins, 26 IBLA 223 (Aug. 17, 1976)

Where the Bureau of Land Management determines that an Alaska Native allotment application should be rejected because the land was not used and occupied by the applicant, the BLM shall issue a contest complaint pursuant to 43 CFR 4.451 et seq. Upon receiving a timely answer to the complaint, which answer raises a disputed issue of material fact, the Bureau will forward the case file to the Hearings Division, Office of Hearings and Appeals, Department of the Interior, for assignment of an Administrative Law Judge, who will proceed to schedule a hearing at which the applicant

HEARINGS--Continued

may produce evidence to establish entitlement to his allotment.

Donald Peters, 26 IBLA 235 (Aug. 17, 1976) 83 I.D. 308

Under 43 CFR 2802.1-7(e), which provides that charges for a right-of-way on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Paradise Oil, Water and Land Development, Inc., 26 IBLA 374 (Sept. 8, 1976)

Under 43 U.S.C. § 961 (1970) and 43 CFR 2802.1-7(a), an applicant has no right to a hearing in connection with original charges for use and occupancy of a communication site, and a hearing pursuant to a request under 43 CFR 4.415 will not be granted where applicant fails to make specific allegations or offer specific proof to show in what factors a Departmental appraisal is in error.

Mountain States Telephone and Telegraph Company, 26 IBLA 393 (Sept. 16, 1976) 83 I.D. 332

Where an attorney files an answer to a contest concerning mining claims on behalf of certain individuals, who, during the pendency of the contest proceedings, transfer their interests in the mining claims to a corporation of which they are major stockholders and Directors, and the attorney represents those individuals and the corporation at the contest hearing, the corporation is bound by the determination reached therein, even though the corporation may not have received actual notice of the contest.

Service of a document upon a person's attorney of record constitutes effective service upon such person.

A request for postponement made more than 10 days prior to a hearing is properly denied where there has been no showing of good cause and proper diligence. A contestee's request for postponement is properly denied when (1) a contestee only seeks postponement in order to pursue an exchange of land for the claims; and (2) the Administrative Law Judge rules that the contestant may seek to dismiss the contest if an exchange is contemplated and the contestant does not wish to abate the contest proceedings.

A request for postponement made at a hearing or within 10 days of a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a party's assertion that it has not had adequate opportunity to prepare a defense where such difficulty could have been anticipated before the request was made.

Where a mineral examiner testifies on the basis of his examination of mining claims that the

HEARINGS--Continued

mineral values on the claims are insufficient to support a finding of discovery, a prima facie case against the validity of the claims has been established, and where the contestees walked out of the hearing and did not submit evidence to rebut the prima facie case, the claims must be declared invalid.

United States v. Mine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

HOMESTEADS (ORDINARY)
(See also Soldiers' Additional Homesteads.)

GENERALLY

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage per entry and publicly announced the availability of water for irrigation.

Lewis M. Eslick, 24 IBLA 237 (Mar. 24, 1976)

The affidavit of a witness in support of a homestead entryman's final proof will not be considered where it was given in the presence of the entryman, 43 CFR 1823.2-2, as it is the policy of the Department to assure that the testimony of a witness is his own and not that of the entryman.

Estate of Lon Philpott, Deceased, 28 IBLA 68 (Nov. 10, 1976)

CONTESTS

"Final entry." When an amended homestead final proof has been submitted, the term "final entry" in the proviso in sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, as amended, 43 U.S.C. § 1165 (1970) refers to the submission, to the proper officials, of the amended final proof and required fees.

Under sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, as amended, 43 U.S.C. § 1165 (1970) which requires issuance of a patent 2 years after receipt upon final proof for a homestead entry, a contest against an entry should not be dismissed where the complaint was filed within 2 years following the submission of additional affidavits amending the entryman's deficient final proof, despite the fact that the receipt been issued more than 2 years before filing of the complaint and the receipt had never been canceled or a new receipt issued.

United States v. Joe W. Bryant, 25 IBLA 247 (June 23, 1976)

CULTIVATION

Where a homestead entryman submits the testimony of two witnesses with his final proof and that testimony does not show that the

HOMESTEADS (ORDINARY)--Continued

CULTIVATION--Continued

entryman has complied with the cultivation and residence requirements of the law, the final proof is defective on its face; final proof which is defective on its face will be rejected and the homestead entry canceled.

Estate of Lon Philpott, Deceased, 28 IBLA 68 (Nov. 10, 1976)

FINAL PROOF

In proper circumstances, the issuance of an order to show cause why final proof should not be rejected and entry canceled, is within the discretionary authority of the Bureau of Land Management in adjudicating a homestead application.

Under sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, as amended, 43 U.S.C. § 1165 (1970) an order to show cause why final proof should not be rejected and entry canceled, which order requires the showing of a material fact, is considered a contest or protest.

The showing of "kind of crop planted" and "quantity of crop harvested" are reasonable requirements for final proof submitted for an Alaska homestead.

"Final entry." When an amended homestead final proof has been submitted, the term "final entry" in the proviso in sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, as amended, 43 U.S.C. § 1165 (1970) refers to the submission, to the proper officials, of the amended final proof and required fees.

Under sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, as amended, 43 U.S.C. § 1165 (1970) which requires issuance of a patent 2 years after receipt upon final proof for a homestead entry, a contest against an entry should not be dismissed where the complaint was filed within 2 years following the submission of additional affidavits amending the entryman's deficient final proof, despite the fact that the receipt in connection with the deficient proof had been issued more than 2 years before filing of the complaint and the receipt had never been canceled or a new receipt issued.

United States v. Joe W. Bryant, 25 IBLA 247 (June 23, 1976)

The affidavit of a witness in support of a homestead entryman's final proof will not be considered where it was given in the presence of the entryman, 43 CFR 1823.2-2, as it is the policy of the Department to assure that the testimony of a witness is his own and not that of the entryman.

Where a homestead entryman submits the testimony of two witnesses with his final proof and that testimony does not show that the entryman has complied with the cultivation and residence requirements of the law, the final proof is defective on its face; final

HOMESTEADS (ORDINARY)--Continued

FINAL PROOF--Continued

proof which is defective on its face will be rejected and the homestead entry canceled.

Estate of Lon Philpott, Deceased, 28 IBLA 68 (Nov. 10, 1976)

LANDS SUBJECT TO

An application to make homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

Clifford Prisbrey, 24 IBLA 108 (Mar. 1, 1976)

An application to make homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage per entry and publicly announced the availability of water for irrigation.

Lewis M. Eslick, 24 IBLA 237 (Mar. 24, 1976)

RESIDENCE

Pursuant to 43 CFR 2567.5(a)(1), a homestead entryman in Alaska must establish residence upon the land within 6 months of the date of allowance of the entry or within a maximum period of 12 months, if a 6-month extension of time was requested and granted. These periods do not commence at the time of the filing of the application.

Albert A. Howe, 26 IBLA 386 (Sept. 15, 1976)

Where a homestead entryman submits the testimony of two witnesses with his final proof and that testimony does not show that the entryman has complied with the cultivation and residence requirements of the law, the final proof is defective on its face; final proof which is defective on its face will be rejected and the homestead entry canceled.

Estate of Lon Philpott, Deceased, 28 IBLA 68 (Nov. 10,

SETTLEMENT

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage per entry and publicly announced the availability of water for irrigation.

Lewis M. Eslick, 24 IBLA 237 (Mar. 24, 1976)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

CLASSIFICATION

In a decision on a request for reconsideration, the earlier decision holding that an application for an Indian allotment under sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1970), is properly reduced from 160 to 80 acres will be sustained where a Bureau of Land Management detailed report of field examination shows the land to be nonirrigable agricultural in character.

Edgar L. Cerday, 25 IBLA 229 (June 21, 1976)

LANDS SUBJECT TO

In a decision on a request for reconsideration, the earlier decision holding that an application for an Indian allotment under sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1970), is properly reduced from 160 to 80 acres will be sustained where a Bureau of land Management detailed report of field examination shows the land to be nonirrigable agricultural in character.

Edgar L. Cerday, 25 IBLA 229 (June 21, 1976)

INDIAN ECONOMIC ENTERPRISES

BUY INDIAN ACT

The provisions of the Act of June 25, 1910 (36 Stat. 861, 25 U.S.C. § 47), commonly referred to as the "Buy Indian" Act, plainly bestow discretionary authority on the Secretary of the Interior with respect to the purchase of products and labor of Indian industry.

Administrative Appeal of Means Construction Company, et al. v. Commissioner of Indian Affairs, 5 IBIA 242 (Nov. 5, 1976)

INDIAN LANDS
(See also Indian Probate.)

CONTRACTS

Formation and Validity

Bid and Award

Mistakes

Where the Bureau of Indian Affairs knew or should have known of the bidder's mistake, a bidder on Indian lands is entitled to recover deposits where he is guilty of mistake in misreading of specification.

Administrative Appeal of Douglas Stout v. Commissioner, Bureau of Indian Affairs, 5 IBIA 260 (Dec. 3, 1976) 83 I.D. 603

INDIAN LANDS--Continued

LEASES AND PERMITS

Generally

Except where prohibited by statute or regulations a lease which remains executory in part may be canceled or abandoned by mutual consent.

Cancellation or abandonment of a lease may be implied from acts of the parties in negotiating for a new lease concerning the same property or subject matter.

Upon issuance of a show cause letter by the Bureau of Indian Affairs, and it appearing that the alleged violation can be corrected, the lessee shall be given a reasonable opportunity to cure the breach.

Administrative Appeal of Harold Hansen v. Area Director, Aberdeen Area Office, et al., 5 IBIA 4 (Jan. 20, 1976)

Leases may be granted by the Secretary pursuant to 25 CFR 131.2(a)(4) only where adult owners who qualify under 25 CFR 131.3 are unable to agree upon a lease.

Administrative Appeal of James Morgan, Jr. v. Area Director, Aberdeen Area Office, et al., 5 IBIA 14 (Jan. 22, 1976) 83 I.D. 20

Long-term Business

Generally

In the absence of any qualifications, the plain and ordinary construction or meaning of the term gross receipts as contained in the lease must be given.

Administrative Appeal of Palm Patencio Company, Inc., et al. v. Winifred Patencio Preckwinkle, et al., 5 IBIA 37 (Mar. 2, 1976)

RESERVATION BOUNDARY

Where an Indian tribe acquired title to land under treaty, an erroneous survey of a boundary which became the boundary of an adjacent wilderness area, could be administratively corrected and control would be restored to the tribe under 16 U.S.C. § 473 (1970).

Taos Pueblo Tract C, M-36884 (Oct. 28, 1976) 83 I.D. 529

TRESPASS

Damages

Notice and demand for collection of damages for trespass on Indian lands are prerequisites to

INDIAN LANDS--Continued

TRESPASS--Continued

Damages--Continued

filing suit in federal district court to collect damages for trespass and is not subject to appeal under 25 CFR Part 2.

Administrative Appeal of Dean Hansen v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 5 IBIA 250 (Nov. 16, 1976)
83 I.D. 561

TRIBAL RIGHTS IN ALLOTTED LANDS

Absent regulation requiring otherwise the most equitable valuation date would be the date the Tribe elects to purchase the property of a noneligible heir or devisee.

The Board is not bound by the Bureau of Indian Affairs' appraisla, report and findings contained therein. Instead, the Board will give consideration to the complete record, including the BIA appraisal, report and findings in arriving at its findings and determination.

Estate of Cecelia Smith Vergote (Borger), Morris A. (K.) Charles and Caroline J. Charles (Brendale), 5 IBIA 96 (May 21, 1976)
83 I.D. 209

Absent controlling guidelines in the statute concerning valuation date (fair market value) it is more equitable to charge the Yakima Tribe the fair market value of the property as of the date the Tribe elected to purchase same, i.e., Jan. 25, 1974.

Estate of Temens (Timens) Vivian Gardafee, 5 IBIA 113 (May 27, 1976) 83 I.D. 216

INDIAN PROBATE
(See also Indian Lands, Indian Tribes.)

ADMINISTRATIVE PROCEDURE

105.2 Official Notice, Record

Official notice of documents and records will not be taken unless they are introduced in evidence or unless an order or stipulation provides to the contrary.

Estate of Peahner (Mabel) (Mable) Mahseet, 5 IBIA 27 (Feb. 23, 1976)

APPEAL

130.4 Matters Considered on Appeal

The Board is not required to consider new evidence first raised on appeal. However, were the Department disposed to ignoring its own regulations governing when new evidence shall be considered, appellants' case still would

INDIAN PROBATE--Continued

APPEAL--Continued

130.4 Matters Considered on Appeal--Continued

not be bolstered by an exceptional consideration of evidence now tendered.

Estate of Harold Humpy, 5 IBIA 132 (June 18, 1976)

130.7 Timely Filing

An appeal not filed within the time specified under Departmental Probate regulations will not be entertained and will be dismissed.

Estate of Edward Alpheus Jones, 5 IBIA 138 (June 18, 1976)

ATTORNEYS AT LAW

140.0 Generally

There is no existing requirement that the Secretary of the Interior furnish counsel to parties in Indian probate proceedings conducted in accordance with 43 CFR 4.200 et seq. Secondly, the absence of eligible private counsel from an Indian probate hearing, standing alone, does not present sufficient justification for requiring a rehearing in order to receive additional evidence.

Under the circumstances of a contested will which includes a devise of property to a brother long dead, a "self-proved will" does not pass muster by perfunctory questioning of witnesses. Further, although the task of the Administrative Law Judge to develop a complete record may be made more difficult by the absence of counsel for the parties, this important function must still be satisfied.

An Administrative Law Judge is obligated to advise Indian parties of their right to counsel in Indian probate proceedings. When parties voluntarily proceed with a hearing without counsel the Administrative Law Judge shoulders an additional responsibility.

Estate of Peahner (Mabel) (Mable) Mahseet, 5 IBIA 27 (Feb. 23, 1976)

The Administrative Law Judge shoulders additional responsibility in developing a complete record when parties proceed with a hearing without counsel. In this case the Board is fully utilized the hearings to bring forth all the facts.

Estate of Harold Humpy, 5 IBIA 132 (June 18, 1976)

Administrative Law Judges bear an additional responsibility when parties voluntarily proceed with probate proceedings without counsel. Here the record shows that the Administrative Law Judge has done all which could reasonably

INDIAN PROBATE--Continued

ATTORNEYS AT LAW--Continued

140.0 Generally--Continued

be expected in assisting the aggrieved parties pursue their claims.

Estate of Simpson Nokusille, 5 IBIA 178 (Sept. 24, 1976)

CLAIM AGAINST ESTATE

165.0 Generally

Appellant fails to refer to any persuasive authority which directs against the submission of a general claim against a deceased Indian's trust estate on someone else's behalf. In the absence of a specific regulation to this effect in 43 CFR 4.250 et seq., regarding claims against estates, we believe it would be inequitable for this Board to nullify an individual Indian's proved claim on the merely technical basis that the claim was filed for and not by the claimant.

In fairness to individual Indian claimants who have had neither the benefit of their own counsel nor guidance from the Administrative Law Judge which could have averted a correctable alleged error in the manner of a claim presentation, it is no stretch of the Secretary's administrative authority to uphold such a claim on appeal despite a showing of such possible error.

Estate of Wahwersee R. Werqueyah, 5 IBIA 169 (Aug. 24, 1976)

165.5 Limitation on Actions

It was within the authority of the Administrative Law Judge to disallow appellant's claim where the evidence shows that a similar claim would be barred under state law as untimely.

Estate of Lawrence Ecoffey, 5 IBIA 85 (Apr. 16, 1976)

165.10 Proof of Claim

An unsecured creditor is hard-pressed to overcome objections to his claim if he fails to appear at the probate hearing. This possibility is conveyed to general creditors in the notice of hearing.

Estate of Lawrence Ecoffey, 5 IBIA 85 (Apr. 16, 1976)

165.11 Secured Claim

165.11.0 Generally

If the tribal credit board is correct in its assertion that its claim is secured by a

INDIAN PROBATE--Continued

CLAIM AGAINST ESTATE--Continued

165.11 Secured Claim--Continued

165.11.0 Generally--Continued

valid Assignment of Trust Income and Power to Lease, legal steps may be taken outside the probate of decedent's estate to seek redress.

Estate of Lawrence Ecoffey, 5 IBIA 85 (Apr. 16, 1976)

DIVORCE

205.0 Generally

The issue of divorce in this case is not controlled by the laws of the State of Washington. The evidence establishes that the separation between the decedent and appellant commenced in 1958, 5 years before the Act of Aug. 15, 1953, 67 Stat. 589, was invoked by Washington in its assumption of civil jurisdiction over Indians.

Estate of John Ignace, 5 IBIA 50 (Mar. 19, 1976)

205.1 Indian Custom

205.1.0 Generally

Assuming that a resolution adopted by the Business Committee of the Kalispel Tribe on May 8, 1975, which disavows the validity of Indian-custom divorces between Kalispel Indians married by the Catholic Church represents a formally approved ordinance or by-law of the tribe, it cannot be given the retroactive effect of invalidating previous divorces which were consummated in accordance with recognized Indian custom.

Since it is well established that an Indian-custom divorce dissolves a ceremonial marriage as well as an Indian-custom marriage, the relevant fact in this case is whether the custom of the tribe permits divorce by a permanent separation of the parties. The church custom of particular members of the tribe, whether Catholic or some other religious order, has no bearing unless it can be shown that the tribe adopted specific laws or customs of the church as its own.

Estate of John Ignace, 5 IBIA 50 (Mar. 19, 1976)

DOWER

210.0 Generally

Dower may be properly denied a widow disinherited by will since there is no constitutional right to it and the state law providing dower is inoperative upon Indian Trust lands generally.

Estate of Louis Baptist, 5 IBIA 49 (Mar. 8, 1976)

INDIAN PROBATE--Continued

EVIDENCE

225.0 Generally

The general rule that an Administrative Law Judge's finding of testamentary capacity rendered after consideration of conflicting testimony will not be disturbed on appeal is not an unqualified rule. The judge's finding must be supported by substantial evidence and the evidence relied upon must be competent.

Estate of Peahner (Mabel) (Mable) Mahseet, 5 IBIA 27 (Feb. 23, 1976)

In order for an Administrative Law Judge's finding to be upheld or sustained, the finding must be supported by a preponderance of the evidence.

Estate of Alvin Hudson, 5 IBIA 174 (Sept. 2, 1976)

225.2 Hearsay Evidence

Alleged declarations of the decedent were properly considered in this case under an exception to the hearsay evidence rule. In addition, Departmental regulations bestow broad authority upon the Administrative Law Judge to consider evidence "not ordinarily admissible under the generally accepted rules of evidence . . ." 43 CFR 4.232(b).

Estate of Harold Humpy, 5 IBIA 132 (June 18, 1976)

225.4 Newly Discovered Evidence

There is no existing requirement that the Secretary of the Interior furnish counsel to parties in Indian probate proceedings conducted in accordance with 43 CFR 4.200 et seq. Secondly, the absence of eligible private counsel from an Indian probate hearing, standing alone, does not present sufficient justification for requiring a rehearing in order to receive additional evidence.

Estate of Peahner (Mabel) (Mable) Mahseet, 5 IBIA 27 (Feb. 23, 1976)

The Board is not required to consider new evidence first raised on appeal. However, were the Department disposed to ignoring its own regulations governing when new evidence shall be considered, appellants' case still would not be bolstered by an exceptional consideration of evidence now tendered.

Estate of Harold Humpy, 5 IBIA 132 (June 18, 1976)

225.9 Requests for Discovery

The Department's regulations concerning the rights of parties to submit discovery request,

INDIAN PROBATE--Continued

EVIDENCE--Continued

225.9 Requests for Discovery--Continued

43 CFR 4.220 et seq., were designed to facilitate the achievement of a full and complete hearing. The regulations do not provide that an Administrative Law Judge should reopen discovery after a hearing to assist aggrieved parties in a search for new evidence. However, where a hearing de novo has been found to be required, it is appropriate to reopen discovery for all parties up to the time that a new hearing is scheduled.

Estate of Peahner (Mabel) (Mable) Mahseet, 5 IBIA 27 (Feb. 23, 1976)

HALF BLOOD

250.0 Generally

State statutes of descent and distribution as construed and interpreted by the highest court of the state involved will be considered by the Department as controlling in trust heirship proceedings.

Estate of Hubert Franklin Cook, 5 IBIA 42 (Mar. 4, 1976) 83 I.D. 75

HEARING

255.3 Full and Complete

The Administrative Law Judge shoulders additional responsibility in developing a complete record when parties proceed with a hearing without counsel. In this case the Board is satisfied that the Administrative Law Judge fully utilized the hearings to bring forth all the facts.

Estate of Harold Humpy, 5 IBIA 132 (June 18, 1976)

INDIAN REORGANIZATION ACT OF JUNE 18, 1934

270.0 Generally

The Indian Reorganization Act recognizes two classes of persons who may take testator's lands by devise, that is, any member of the tribe having jurisdiction over such lands and legal heirs of the testator.

Estate of Lucinda Shelton Joe, 5 IBIA 50 (Feb. 4, 1976)

Estate of Dewey Cleveland, 5 IBIA 72 (Apr. 15, 1976) 83 I.D. 170

270.1 Construction of Section 4

The words "or any heirs of such member" found in sec. 4 (25 U.S.C. § 464 (1970)) were early concluded by the Solicitor to mean those who

INDIAN PROBATE--Continued

INDIAN REORGANIZATION ACT OF JUNE 18, 1934--Continued

270.1 Construction of Section 4--Continued

would, in absence of the will, have been entitled to share in the estate.

Estate of Dewey Cleveland, 5 IBIA 72 (Apr. 15, 1976) 83 I.D. 170

RECONSIDERATION

365.0 Generally

Indian probate regulations do not contain any provisions for reconsideration of a matter which has been finally determined by the Secretary of the Interior, yet he has the inherent power to reopen and review administrative determinations when some new factors such as newly discovered evidence or fraud are involved.

Estate of San Pierre Kilkakhan (Sam E. Hill), 5 IBIA 12 (Jan. 21, 1976)

REHEARING

370.0 Generally

Petition for rehearing based upon newly discovered evidence shall be accompanied by affidavits of witnesses stating fully what the new testimony is to be. It shall also state justifiable reasons for the failure to discover and present that evidence tendered as new at the hearing held prior to the issuance of the original decision and order.

Estate of Louis Baptist, 5 IBIA 48 (Mar. 8, 1976)

The Board is not required to consider new evidence first raised on appeal. However, were the Department disposed to ignoring its own regulations governing when new evidence shall be considered, appellants' case still would not be bolstered by an exceptional consideration of evidence now tendered.

Estate of Harold Humpy, 5 IBIA 132 (June 18, 1976)

370.1 Pleading, Timely Filing

The Administrative Law Judge did not commit error in denying a rehearing to parties who failed to file a timely request for rehearing, even though the petitions were filed only one day late.

Administrative Law Judges bear an additional responsibility when parties voluntarily proceed with probate proceedings without counsel. Here the record shows that the Administrative Law Judge has done all which could

INDIAN PROBATE--Continued

REHEARING--Continued

370.1 Pleading, Timely Filing--Continued

reasonably be expected in assisting the aggrieved parties pursue their claims.

Estate of Simpson Nokusille, 5 IBIA 178 (Sept. 24, 1976)

REOPENING

375.0 Generally

The decision to reopen this estate is supported by the fact that the allegations made in the petition to reopen are not contradicted by other evidence appearing in the record and because the allegations can easily be proved by an examination of available witnesses and reliable documentary evidence.

Omission of an heir is a type of injustice which Departmental regulations permitting reopening were designed to correct.

Estate of Opie Samuel Bordeaux, Sr., 5 IBIA 24 (Feb. 10, 1976)

While requests for reopening estates closed for more than 3 years face rigid requirements under Departmental regulations, exceptional cases arise in which such petitions, should be granted.

Generally, three elements must be satisfied to justify reopening an estate which has been closed a long time. First, it must appear that a manifest injustice will likely prevail if the petition to reopen is denied. Second, it should be demonstrated by compelling proof that the delay in requesting relief was not occasioned by the lack of diligence on the part of the petitioning parties. Third, there should exist a possibility for correction of the error.

Estate of David Marksman, 5 IBIA 56 (Mar. 29, 1976)

Under the former provisions of 25 CFR 15.18 (now 43 CFR 4.242) reopenings are limited to those persons who had no notice of the original proceedings and were not on the reservation, thus, one in attendance at the original hearing or who had notice has no standing to file a petition to reopen.

Estate of Russell Harold Bobb, 5 IBIA 92 (May 10, 1976)

Requests for reopening estates closed more than 3 years face rigid requirements under departmental regulations and will be granted only in exceptional cases.

Estate of Bert Dog Trail, 5 IBIA 122 (June 8, 1976)

INDIAN PROBATE--Continued

REOPENING--Continued

375.0 Generally--Continued

Pursuant to 43 CFR 4.242(h), the Board is not required to reopen an estate closed for more than three years unless a probable manifest injustice can be shown.

Estate of Mary Soldierwolf, 5 IBIA 146 (July 13, 1976)

The Board has frequently held that petitions to reopen closed estates require compelling proof that delays in requesting relief have not been occasioned by lack of diligence on the part of petitioning parties.

Where continued effect has been given to a natural disposition of property for over 53 years, the reopening of an estate based on alleged failures of a conditional devisee who is no longer alive to defend his inherited interest would risk greater possible injustices than such reopening could hope to prevent.

Estate of Annie Bear, 5 IBIA 149 (July 21, 1976)

The Superintendent of an Indian agency is a proper official of the Bureau of Indian Affairs to file a petition for reopening under the authority of 43 CFR 4.242, although he has no interest in the outcome of such petition.

An Indian will may be presented for probate even though the estate of the decedent has been distributed as intestate property.

It would be unconscionable for the Secretary of the Interior to fail to give effect to a Departmentally approved will of a deceased Indian which was misfiled by the Agency, unless it can be demonstrated by way of a hearing that the provisions of the will should not be followed.

Estate of Joan (Joanna) Horsechief, 5 IBIA 182 (Sept. 29, 1976) 83 I.D. 362

While requests for reopening estates closed for more than 3 years face rigid requirements under Departmental regulations, exceptional cases arise in which such petitions should be granted.

Generally, three elements must be satisfied to justify reopening an estate which has been closed a long time. First, it must appear that a manifest injustice will likely prevail if the petition to reopen is denied. Second, it should be demonstrated by compelling proof that the delay in requesting relief was not occasioned by the lack of diligence on the part of the petitioning parties. Third, there should exist a possibility for correction of the error.

In the Matter of the Estates of Morgan Black and Mary Grant Black, 5 IBIA 219 (Oct. 28, 1976)

Under the provisions of 43 CFR 4.242 reopenings are limited to those persons who had no notice

INDIAN PROBATE--Continued

REOPENING--Continued

375.0 Generally--Continued

of the original proceedings and were not on the reservation, thus, one in attendance at the original hearing or who had actual notice has no standing to file a petition to reopen.

Estate of Ella Ashbough Randall Genereaux, 5 IBIA 248 (Nov. 10, 1976)

375.1 Waiver of Time Limitation

Where probate was not undertaken until 10 years after decedent's death and the petitioner did not learn of the probate hearing until another 3 years later, the Board is not inclined to deny the petition to reopen for untimeliness.

Estate of Opie Samuel Bordeaux, Sr., 5 IBIA 24 (Feb. 10, 1976)

An estate which has been closed for 13 years may be reopened under extraordinary circumstances to add an omitted heir to the original determination of heirs, notwithstanding the estate is no longer intact, so as to protect the omitted heir if additional property of the decedent is later discovered and to provide a consistent heirship record.

Estate of Oscar Bubuna Deloria, 5 IBIA 34 (Feb. 26, 1976)

A petition to reopen on the grounds of lack of notice, filed more than 3 years after the entry of the order determining heirs, will not be granted unless there is compelling proof that the delay was not occasioned by the petitioner's lack of diligence.

Estate of Enoch Abraham, 5 IBIA 89 (Apr. 22, 1976)

Estate of Russell Harold Bobb, 5 IBIA 92 (May 10, 1976)

375.2 Standing to Petition for Reopening

The petitioners, grandsons of the testatrix who are not heirs at law, cannot be considered to be persons with "an interest in the estate" which is the recognized standard governing who may seek reopening.

Estate of Mary Soldierwolf, 5 IBIA 146 (July 13, 1976)

TRUST PROPERTY

415.0 Generally

Where trust patents for allotments for lands were issued in conformity with the General

INDIAN PROBATE--Continued

TRUST PROPERTY--Continued

415.0 Generally--Continued

Allotment Act and contained usual provision that the United States would hold lands subject to statutory provisions and restrictions for a period of years, in trust for the sole use and benefit of Indians, and lands were chiefly valuable for their timber, the restraint upon alienation, effected by terms of trust patents, extended to timber and proceeds derived thereform as well as to lands.

Estate of Elizabeth C. Jensen McMaster, 5 IBIA 61 (Apr. 6, 1976) 83 I.D. 145

WILLS

425.0 Generally

There is no statute or regulation that would disqualify a non-Indian, as such, as devisee of real property located on the Kiowa-Comanche-Apache Indian Reservation in Oklahoma.

Estate of Vincent Victorio Natalish, Jr., 5 IBIA 1 (Jan. 19, 1976)

Under the circumstances of a contested will which includes a devise of property to a brother long dead, a "self-proved will" does not pass muster by perfunctory questioning of witnesses. Further, although the task of the Administrative Law Judge to develop a complete record may be made more difficult by the absence of counsel for the parties, this important function must still be satisfied.

Estate of Peahner (Mabel) (Mable) Mahseet, 5 IBIA 27 (Feb. 23, 1976)

It is not a valid basis for overturning an Indian's will that certain relatives were not included in a devise of property.

Estate of Mary Soldierwolf, 5 IBIA 146 (July 13, 1976)

An Indian will may be presented for probate even though the estate of the decedent has been distributed as intestate property.

Estate of Joan (Joanna) Horsechief, 5 IBIA 182 (Sept. 29, 1976) 83 I.D. 362

425.5 Approval of Will

A copy of a will can be admitted to probate only if proper execution of the original can be proved.

For the Secretary to withhold approval of testator's will in this case, which omits his illegitimate child and sole heir at law, would be tantamount to applying a "just and equitable" standard in passing on an Indian's will, which is the precise error in Departmental judgment previously condemned by the Supreme Court.

Estate of Anthony Bitseedy, 5 IBLA 270 (Dec. 17, 1976)

425.6 Children, Disinheritance of

For the Secretary to withhold approval of testator's will in this case, which omits his illegitimate child and sole heir at law, would be tantamount to applying a "just and equitable" standard in passing on an Indian's will, which is the precise error in Departmental judgment previously condemned by the Supreme Court.

Estate of Anthony Bitseedy, 5 IBLA 270 (Dec. 17, 1976)

425.7 Construction of

It is incumbent upon the Administrative Law Judge under existing regulations in testate cases to construe the provisions of a will.

Estate of Herman Coando, 5 IBIA 140 (June 22, 1976) 83 I.D. 229

The Board realizes that the Department's Oct. 26, 1927, order approving will construes the devise to John Sherman to be conditional upon his taking care of testatrix's son, petitioner in this case, but, based on the scant record developed in the original probate proceeding, it is not beyond reason that this construction was erroneous.

Estate of Annie Bear, 5 IBIA 149 (July 21, 1976)

425.10 Dependent Relative Revocation

For a revocation clause of an Indian will to be effective the will itself must be admitted to probate.

Estate of Anthony Bitseedy, 5 IBIA 270 (Dec. 17, 1976)

425.11 Disapproval of Will

Regardless of scope of Administrative Law Judge's authority to grant or withhold approval of the will of an Indian under statute, there is not vested in the Judge power to revoke a will

INDIAN PROBATE--Continued

WILLS--Continued

425.11 Disapproval of Will--Continued

which reflects a rational testamentary scheme disposing of trust or restricted property.

Estate of Gerald Martinez, Sr., 5 IBIA 162 (Aug. 13, 1976) 83 I.D. 162

425.14 Failure to Mention Child

The failure of a testator to provide for his wife or child or children in a will does not invalidate the will.

Estate of George Yellow Wolf, 5 IBIA 70 (Apr. 13, 1976)

425.15 Failure to Mention Spouse

The failure of a testator to provide for his wife or child or children in a will does not invalidate the will.

Estate of George Yellow Wolf, 5 IBIA 70 (Apr. 13, 1976)

425.17 Lost Will

An Indian will may be presented for probate even though the estate of the decedent has been distributed as intestate property.

Estate of Joan (Joanna) Horsechief, 5 IBIA 182 (Sept. 29, 1976) 83 I.D. 362

425.20 Proof of Will

Departmental regulations require that an Indian will be executed in writing and attested by two disinterested adult witnesses.

Estate of Anthony Bitseedy, 5 IBIA 270 (Dec. 17, 1976)

425.25 Revocation

For a revocation clause of an Indian will to be effective the will itself must be admitted to probate.

Estate of Anthony Bitseedy, 5 IBIA 270 (Dec. 17, 1976)

425.28 Testamentary Capacity

425.28.0 Generally

The general rule that an Administrative Law Judge's finding of testamentary capacity

INDIAN PROBATE--Continued

WILLS--Continued

425.28 Testamentary Capacity--Continued

425.28.0 Generally--Continued

rendered after consideration of conflicting testimony will not be disturbed on appeal is not an unqualified rule. The judge's finding must be supported by substantial evidence and the evidence relied upon must be competent.

Under the circumstances of a contested will which includes a devise of property to a brother long dead, a "self-proved will" does not pass muster by perfunctory questioning of witnesses. Further, although the task of the Administrative Law Judge to develop a complete record may be made more difficult by the absence of counsel for the parties, this important function must still be satisfied.

Estate of Peahner (Mabel) (Mable) Mahseet, 5 IBIA 27 (Feb. 23, 1976)

The burden of proof as to testamentary incapacity in Indian probate proceedings is on the one contesting the will, and an aged Indian is not deemed to be incapacitated from making a valid will by being a chronic alcoholic or by being unable to manage his own affairs.

Estate of Louis Baptist, 5 IBIA 48 (Mar. 8, 1976)

425.28.1 Alcohol

Testimony of physician, based on his treatment and observation of testator at various times, to the effect that testator may have suffered permanent brain damage and disease but which is inconclusive as to whether testator had testamentary capacity does not support a finding of testamentary incapacity when the scrivener and other witnesses testified that from their conversations with and observations of testator at and/or about the time the will was executed they believed him to be sober, alert and in all respects competent to make a will.

Estate of Arnold Ross, 5 IBIA 277 (Dec. 21, 1976)

425.30 Undue Influence

425.30.1 Failure to Establish, Generally

Undue influence will not be presumed where the evidence affirmatively discloses that the beneficiary of a will who accompanied the testator to the office of the scrivener was not present when the terms of the will were discussed or when the will was executed.

Estate of Arnold Ross, 5 IBIA 277 (Dec. 21, 1976)

INDIAN PROBATE--Continued

WILLS--Continued

425.30 Undue Influence--Continued

425.30.2 Failure to Establish, Opportunity

The mere fact that a beneficiary in a will or other grandchildren were in a position to exert undue influence on the testator is insufficient to establish the invalidity of the will, when convincing proof that the beneficiary or others actually exerted undue influence is lacking.

Estate of Arnold Ross, 5 IBIA 277 (Dec. 21, 1976)

425.31 Unnatural Will

The fact that an Indian Testator believes he has no heir and that his property would escheat to the state should he die intestate does not affect a devise under his will.

Estate of Vincent Victorio Natalish, Jr., 5 IBIA 1 (Jan. 19, 1976)

For the Secretary to withhold approval of testator's will in this case, which omits his illegitimate child and sole heir at law, would be tantamount to applying a "just and equitable" standard in passing on an Indian's will, which is the precise error in Departmental judgment previously condemned by the Supreme Court.

Estate of Anthony Bitseedy, 5 IBIA 270 (Dec. 17, 1976)

425.32 Witnesses, Attesting

Departmental regulations require that an Indian will be executed in writing and attested by two disinterested adult witnesses.

Estate of Anthony Bitseedy, 5 IBIA 270 (Dec. 17, 1976)

425.34 Self-proved Wills

Under the circumstances of a contested will which includes a devise of property to a brother long dead, a "self-proved will" does not pass muster by perfunctory questioning of witnesses. Further, although the task of the Administrative Law Judge to develop a complete record may be made more difficult by the absence of counsel for the parties, this important function must still be satisfied.

Estate of Peahner (Mabel) (Mable) Mahseet, 5 IBIA 27 (Feb. 23, 1976)

INDIAN PROBATE--Continued

YAKIMA TRIBES

435.0 Generally

Absent regulations requiring otherwise the most equitable valuation date would be the date the Tribe elects to purchase the property of a noneligible heir or devisee.

Estate of Cecelia Smith Vergote (Borger), Morris A. (K.) Charles and Caroline J. Charles (Brendale), 5 IBIA 96 (May 21, 1976) 83 I.D. 209

Absent controlling guidelines in the statute concerning valuation date (fair market value), it is more equitable to charge the Yakima Tribe the fair market value of the property as of the date the Tribe elected to purchase same, i.e., Jan. 25, 1974.

Estate of Temens (Timens) Vivian Gardafee, 5 IBIA 113 (May 27, 1976) 83 I.D. 216

435.1 Valuation Reports

The Board is not bound by the Bureau of Indian Affairs' appraisal, report and findings contained therein. Instead, the Board will give consideration to the complete record, including the BIA appraisal, report and findings in arriving at its findings and determination.

Estate of Cecelia Smith Vergote (Borger), Morris A. (K.) Charles and Caroline J. Charles (Brendale), 5 IBIA 96 (May 21, 1976) 83 I.D. 209

INDIAN TRIBES
(See also Indian Probate.)

CONSTITUTION BYLAWS AND ORDINANCES

Acts of Tribal Chairmen done in contravention of their respective Tribal Constitutions and Bylaws are void from their inception and not binding upon their respective Tribes.

Administrative Appeal of Joe McComas, 5 IBIA 125 (June 11, 1976) 83 I.D. 227

TRIBAL AUTHORITY

Acts of Tribal Chairmen done in contravention of their respective Tribal Constitutions and Bylaws are void from their inception and not binding upon their respective Tribes.

Administrative Appeal of Joe McComas, 5 IBIA 125 (June 11, 1976) 83 I.D. 227

INDIAN WATER AND POWER RESOURCES

GENERALLY

Sec. 5(b) of the Act of May 25, 1948 (62 Stat. 269) is not applicable to those tribal lands upon which the Flathead Irrigation Project's Kerr Substation and Switchyard are located.

Relocation of Flathead Irrigation Project's Kerr Substation and Switchyard, M-36735 (Supp.) (Sept. 24, 1976) 83 I.D. 346

LIEU SELECTIONS

An application by a State for an indemnity school and land selection is not subject to rejection for the sole reason that the base lands are less valuable than the selected lands.

When a State files an indemnity school land application and selects lands withdrawn for leasable minerals and it is determined that disposal of such lands would unreasonably interfere with operations under the mineral leasing laws, such application may be rejected. However, when the State offers to waive the reserved leasable minerals and to allow reasonable surface entry for development and removal of the minerals, the application should be reevaluated in light of such offer.

State of New Mexico, 24 IBLA 135 (Mar. 8, 1976)

Where land had been conveyed to the United States pursuant to the Act of June 4, 1897, ch. 2, 30 Stat. 11, 36, as a base for forest lieu selection rights, and a purported color of title claim was initiated at a time when the land had not been opened to the operation of the public land laws, the color of title claim is not cognizable as valid under 43 U.S.C. § 1068 (1970).

Estate of John C. Brinton, 25 IBLA 283 (June 28, 1976)

The acceptance by a State of other lands as indemnity for lands lying within the meander line of a nonnavigable lake adjacent to the granted upland school section, was a relinquishment of any interest in the adjacent land underlying the lake as an incident to the grant of the school section to the extent such land lies within the linear boundaries of the school section, and precludes the assertion of a State claim to such lands.

State of Montana, 28 IBLA 124 (Nov. 16, 1976)

MATERIALS ACT

It would not be improper to issue a free use permit to a qualified applicant for land included in, and segregated by, an airport lease application where the airport lease applicant is a governmental entity and it consents to the issuance of the free use permit and such issuance is consistent with the public interest.

Good Roads District No. 1, 25 IBLA 123 (June 7, 1976)

Where a contract for the sale of vegetative resources (pine nuts) contains a disclaimer of warranty by the vendor (government) as to the quantity of resources sold, the parties are deemed to have contracted on the assumption that there was doubt as to the quantity, and the risk with respect to such factor must be considered to have been assumed by the purchaser as one of the elements of the bargain. Thus, the fact that the quantity of the resource available for harvesting turned out to be less than was expected at the time of contracting is not a basis for a claim to a refund.

Where appellant alleges a loss of vegetative resources (pine nuts) which he purchased occurring subsequent to the time of contracting and prior to severance, due to severe and unusual damage by birds, and the contract of sale provides that the risk of loss shall remain in the government and not pass to purchaser until such vegetative resources have been severed or extracted, appellant's claim for a refund is governed by the risk of loss provision rather than a disclaimer of warranty as to quantity contained in a separate part of the contract.

Alma LeBaron, Jr., 25 IBLA 164 (June 14, 1976)

Minerals which are subject to location under the general mining law on public land outside the Lake Mead Recreation Area are subject to the leasing provisions of the Act of Oct. 8, 1964, within the Recreation Area. But, minerals which are disposable by sale under the 1947 Materials Act when situated outside the Recreation Area are also subject to such disposal within it.

Rilite Aggregate Company, 26 IBLA 197 (Aug. 11, 1976)

MILLSITES

(See also Mining Claims.)

GENERALLY

Mining claims and millsites located upon land which has been previously withdrawn from entry under the mining laws by a first-form reclamation withdrawal are void ab initio. Because Departmental Order No. 2515 delegated authority to revoke such a withdrawal to the Bureau of Reclamation with the concurrence of the Bureau of Land Management, the land remains withdrawn from mining locations when the Bureau of Land Management does not concur with the recommendation of the Bureau of Reclamation to revoke the withdrawal and restore the land to entry.

J. P. Hinds, et al., 25 IBLA 67 (June 1, 1976) 83 I.D. 275

MILLSITES--Continued

GENERALLY--Continued

Where a millsite is not being used for mining or milling purposes in connection with a mining claim owned by the owner of the millsite, and at the time of contest there is no quartz mill or reduction works on the site, the millsite must be declared null and void.

United States v. Aloys A. Dietemann and Doris E.L. Dietemann, 26 IBLA 356 (Sept. 8, 1976)

DETERMINATION OF VALIDITY

When the Government contests a mining claim, by practice it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden of going forward then shifts to the claimant to show by a preponderance of the evidence that his claim is valid. Likewise, a millsite claimant has the burden of establishing the validity of his claim by a preponderance of the evidence.

United States v. Aloys A. Dietemann and Doris E.L. Dietemann, 26 IBLA 356 (Sept. 8, 1976)

MINERAL LANDS

GENERALLY

Lands known to be mineral in character (except for coal or iron) at the time of definite location of a railroad are excluded from the grant of place lands to the railroad even though the lands may later lose their mineral character.

Southern Pacific Transportation Co., Jay R. Fogal: Lloyd D. Hayes (Intervenor), 23 IBLA 232 (Jan. 9, 1976) 83 I.D. 1

DETERMINATION OF CHARACTER OF

The period for determination by the Department of the Interior whether public land included within the primary limits of a legislative grant-in-aid of the construction of a railroad which excepts mineral land is mineral in character extends to the time of issuance of patent to the railroad company.

When the Department of the Interior finds that public land within the place limits of a legislative grant-in-aid of the construction of a railroad was mineral in character and the railroad company challenges such finding, a hearing should be granted at which the Department has the obligation of making a prima facie case of mineral character, whereupon the company has the burden of establishing nonmineral character by a preponderance of the evidence.

Southern Pacific Transportation Co., Jay R. Fogal: Lloyd D. Hayes (Intervenor), 23 IBLA 232 (Jan. 9, 1976) 83 I.D. 1

MINERAL LANDS--Continued

DETERMINATION OF CHARACTER OF--Continued

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent of workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

Applications for phosphate prospecting permits are properly rejected by the Bureau of Land Management upon the basis of a determination by the Geological Survey that the lands applied for contain workable deposits of phosphate thus making the lands subject to the leasing provisions rather than the prospecting provisions of the Mineral Leasing Act. A review of the technical data relied upon by the Geological Survey in making its determination is not required where no evidence is submitted on appeal demonstrating error in that determination.

William F. Martin, 24 IBLA 271 (Mar. 30, 1976)

A previous determination by the Department of the Interior in a proceeding different from a mining claim contest that land was mineral in character is not evidence of a discovery of a valuable mineral deposit in a mining contest.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

LEASES

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Minerals which are subject to location under the general mining law on public land outside the Lake Mead Recreation Area are subject to the leasing provisions of the Act of Oct. 8, 1964, within the Recreation Area. But, minerals which are disposable by sale under the 1947 Materials Act when situated outside the Recreation Area are also subject to such disposals within it.

A decision to reject an application for a mineral lease within the Lake Mead Recreation Area will be sustained in the absence of a showing that the authorized officer acted unreasonably in rejecting the lease for reasons relating to environmental protection.

Rilite Aggregate Company, 26 IBLA 197 (Aug. 11, 1976)

MINERAL LANDS--Continued

PROSPECTING PERMITS

The issuance of sodium prospecting permits is discretionary with the Secretary of the Interior, and the Secretary may refuse to issue permits for lands withdrawn for wildlife purposes if the use of the lands for mineral prospecting and development activities would adversely affect the wildlife habitat.

Where the regulations and Departmental and BLM Manuals do not specifically state how disputes between the Fish and Wildlife Service and the Bureau of Land Management over issuing sodium prospecting permits for lands within wildlife refuge areas are to be resolved, but the Departmental manuals indicate that such decisions are to be made by the Secretary and the BLM Manual directs that such applications be forwarded to the Washington Office, a decision of a State Office rejecting an application for a sodium prospecting permit will be set aside and the case remanded for processing in accordance with the Departmental and BLM Manuals.

Vernal E. Bess, et al., 27 IBLA 4 (Sept. 17, 1976)

The Bureau of Land Management may issue a sodium prospecting permit for lands adjacent to areas withdrawn for wildlife conservation purposes subject to a stipulation which provides that, in the event of discovery of an exploitable sodium deposit, no preference-right lease will be issued unless hydrologic and other environmental analyses indicate that sodium ore can be removed without a significant adverse environmental impact on the wildlife habitat within the withdrawn areas.

David E. Hughes, 27 IBLA 46 (Sept. 23, 1976)

MINERAL LEASING ACT

(See also Coal Leases and Permits, Geothermal Leases, Oil and Gas Leases, Phosphate Leases and Permits, Sodium Leases and Permits.)

GENERALLY

The Mineral Leasing Act of 1920 vests the Department of the Interior with the discretion to lease public lands for oil and gas, including public lands in the national forests. Although this Department gives most careful consideration to the recommendations of the Forest Service, the latter does not have a veto power over public land leasing.

Chevron Oil Company, 24 IBLA 159 (Mar. 15, 1976)

A sodium prospecting permittee who applies for a preference right sodium lease, alleging with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by sec. 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1970), is entitled to a hearing conducted

MINERAL LEASING ACT--Continued

GENERALLY--Continued

in accordance with sec. 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1970), before his lease application may be finally rejected for failure to prove such a discovery.

Marine Minerals Corporation, 25 IBLA 153 (June 10, 1976)

When deciding whether issuance of a phosphate prospecting permit is appropriate, the Bureau of Land Management is entitled to rely on the reasoned opinion of Geological Survey as its technical expert. A mineral determination made by Geological Survey will not be disturbed in the absence of a clear and definite showing of error. However, when Survey later changes its own determination, the case will be remanded for further consideration.

Philip Shaiman, 25 IBLA 177 (June 14, 1976)

The Secretary of the Interior has complete discretion to determine whether the surface of public land reported as valuable for any leasable mineral should be disposed of and a nonmineral application may be allowed only if it is determined by the proper officer with the concurrence of the Director, Geological Survey, that the disposal of the lands under the nonmineral application will not unreasonably interfere with current or contemplated operations under the Mineral Leasing Act.

The Kemmerer Coal Company, 26 IBLA 127 (July 30, 1976)

Minerals which are subject to location under the general mining law on public land outside the Lake Mead Recreation Area are subject to the leasing provisions of the Act of Oct. 8, 1964, within the Recreation Area. But, minerals which are disposable by sale under the 1947 Materials Act when situated outside the Recreation Area are also subject to such disposals within it.

Rilite Aggregate Company, 26 IBLA 197 (Aug. 11, 1976)

CONSENT OF AGENCY

The Mineral Leasing Act of 1920 vests the Department of the Interior with the discretion to lease public lands for oil and gas, including public lands in the national forests. Although this Department gives most careful consideration to the recommendations of the Forest Service, the latter does not have a veto power over public land leasing.

Chevron Oil Company, 24 IBLA 159 (Mar. 15, 1976)

MINERAL LEASING ACT--Continued

ENVIRONMENT

The drawing of an offer for a noncompetitive lease in a simultaneous oil and gas lease drawing creates no vested rights in the offeror, and the offeror cannot compel the issuance of a lease before an environmental analysis has been made where the Bureau of Land Management has determined that the environmental analysis is necessary for the protection of the resources of the particular area.

Paula J. Jones, 24 IBLA 76 (Feb. 24, 1976)

A decision suspending oil and gas lease applications for public land in a national forest because the Forest Service has not prepared an environmental impact statement on a roadless area will be set aside and the cases remanded for the Bureau of Land Management, in the exercise of its delegated discretion to lease public lands for oil and gas, first to determine whether the Bureau should prepare an environmental impact statement as the lead agency responsible for mineral leasing, and then to act on the offers accordingly.

Chevron Oil Company, 24 IBLA 159 (Mar. 15, 1976)

In exercising the Secretary of the Interior's discretionary authority to lease known sodium deposits under the Mineral Leasing Act, an application to have the lands leased is properly rejected where it appears that the land applied for and surrounding environment near a national recreation area may be more severely damaged than most other sites within the known sodium leasing area, there is local governmental and other opposition to the leasing, and Bureau of Land Management and Forest Service officials recommend preparation of an Environmental Impact Statement for the entire known sodium area before leasing further lands in the area.

Eugene V. Simons, 26 IBLA 208 (Aug. 16, 1976)

It is proper to include environmental protection stipulations in a phosphate lease even though the stipulations apply to privately owned surface lands overlying the federally reserved mineral estate under lease or to privately owned lands used in conjunction with the lease.

Cominco American, Inc., 26 IBLA 329 (Sept. 1, 1976)

RENTALS

The Bureau of Land Management is authorized by regulation 43 CFR 3524.1-4(a)(2)(i) to impose a reasonable bonus per acre as a condition to modifying a phosphate lease by adding land to it noncompetitively.

Cominco American, Inc., 26 IBLA 329 (Sept. 1, 1976)

MINERAL LEASING ACT FOR ACQUIRED LANDS

GENERALLY

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

Michael Shearn, 24 IBLA 259 (Mar. 29, 1976)

Robert L. Williams, 24 IBLA 311 (Apr. 20, 1976)

Mary Nan Spear, 25 IBLA 34 (May 5, 1976)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by 43 CFR 3130.4-4 showing the extent of his ownership of operating rights for the fractional mineral interest not owned by the United States.

June Brooks, 25 IBLA 326 (June 30, 1976)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany her offer with the statement required by the regulation showing the extent of her ownership of operating rights to the fractional mineral interests not owned by the United States.

Beatrice E. Marchand, 26 IBLA 180 (Aug. 9, 1976)

A simultaneous acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interests not owned by the United States, nor can such defect be cured by submitting the information on appeal.

Jelenko Stefanovic, 26 IBLA 229 (Aug. 17, 1976)

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, is defective and is properly rejected when the applicant fails to accompany its offer with the statement required by the regulation showing the extent of its ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror submits its statement of operating rights with its appeal, the defect may

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

GENERALLY--Continued

be considered cured with priority of filing as of that time.

Arkansas Western Gas Company, 27 IBLA 207 (Oct. 6, 1976)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

Frank G. Wells, 28 IBLA 113 (Nov. 15, 1976)

CONSENT OF AGENCY

Where the agency or federal instrumentality involved denies its consent to favorable consideration of an application under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1970), the application must be rejected.

Leeco, Inc. (Appellant), Tennessee Valley Authority (Respondent), 23 IBLA 194 (Jan. 6, 1976)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no discretionary authority to lease such land where the consent is withheld.

Sallie B. Sanford, 24 IBLA 31 (Feb. 17, 1976)

LANDS SUBJECT TO

Lands or mineral interests acquired by purchase by the Tennessee Valley Authority for the development of mineral resources are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Leeco, Inc. (Appellant), Tennessee Valley Authority (Respondent), 23 IBLA 194 (Jan. 6, 1976)

Because the Mineral Leasing Act for Acquired Lands specifically excludes the leasing of land located within an incorporated city, town, or village, a noncompetitive oil and gas lease offer for acquired land within the boundaries of such a city, town, or village is properly rejected.

James L. Santy, 25 IBLA 390 (July 6, 1976)

MINING CLAIMS

(See also Surface Resources Act.)

GENERALLY

The Department of the Interior has the right to contest the validity of an unpatented mining claim at any time until patent issues.

A judgment is not conclusive of a fact erroneously assumed when the fact was not actually litigated and determination thereof was not essential to the decision.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

Where a contestee makes a timely response to a government complaint in a mining contest, which can reasonably be construed as a general denial of the allegations contained in the complaint, the response will be considered a sufficient answer within the contemplation of the regulations. The allegations then cannot be taken as admitted and the mining claim declared null and void without a hearing.

United States v. Cliff Libby, 24 IBLA 39 (Feb. 19, 1976)

A mining claim is a claim to property which may not be declared invalid without proper notice and an adequate opportunity for an agency hearing in accordance with due process of law. That due process consists of notice and opportunity for hearing, and it suffices if the claimant is afforded the opportunity to be present and heard. The fact that the claimant, after filing a timely answer to the contest complaint, refused to attend that hearing and produce evidence does not vitiate the due process he has received.

United States v. Carl Bellamy, 25 IBLA 50 (May 14, 1976)

When title to an entire in-place school section has passed to the state, the United States no longer has a property interest therein and the land is no longer subject to location under the mining laws.

J. P. Hinds, et al., 25 IBLA 67 (June 1, 1976) 83 I.D. 275

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. This withdrawal does not extend to minerals in lands near tributaries of designated rivers unless the tributaries were expressly included.

Walter B. Freeman, et al., 25 IBLA 150 (June 10, 1976)

MINING CLAIMS--Continued

GENERALLY--Continued

Water is not a mineral which is locatable under the general mining law.

The bottling and distribution for sale of spring water for human consumption does not constitute the mining of a valuable mineral deposit under the general mining law.

Robert L. Beery, et al., 25 IBLA 287 (June 28, 1976) 83 I.D. 249

The Department of the Interior may contest the validity of any unpatented mining claims located on public land, including claims located within powersite withdrawals; the Department's authority to contest the validity of mining claims was not diminished by the Mining Claims Rights Restoration Act of 1955.

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

COMMON VARIETIES OF MINERALS

Generally

The Act of July 23, 1955, 30 U.S.C. § 611 (1970), removed common varieties of cinder from location under the mining laws; thus, it is incumbent upon one who located a claim prior to that date for a common variety of cinder to show that all the requirements for a discovery, including a showing that the materials could have been extracted, removed, and marketed at a profit, had been met by that date.

United States v. Melton E. Baker, 23 IBLA 319 (Jan. 19, 1976)

The Act of July 23, 1955, excluded from mining location only common varieties of the materials enumerated in the Act, i.e., "sand, stone, gravel, pumice, pumicite, or cinders;" therefore, a material must fall within one of those categories before the issue of whether it is a common variety becomes pertinent.

Where a stone containing feldspar is simply ground into rock form and used for landscaping and building stone purposes for which the feldspar element has no significance with respect to the stone's final use, the issue may properly arise as to whether the particular stone is a common variety which is excluded from mining location by the Act of July 23, 1955.

United States v. Robert W. Beal, 23 IBLA 378 (Feb. 4, 1976)

A deposit of rhyolite and dacite stone, used in the manufacture of asphaltic concrete and as sealcoating on asphalt pavement, which occurs in a naturally crushed state, which has been roughly stratified and naturally sorted by the forces of nature to an extent that is not

MINING CLAIMS--Continued

COMMON VARIETITES OF MINERALS--Continued

Generally--Continued

found on any other material source in the area, which has little or no overburden, and which affords specification material at a cost significantly below that incurred for the production of any other aggregate from sources in the same market area, has special and distinct physical properties which give it distinct special economic value, and therefore it is locatable as an uncommon variety under the general mining law, and its appropriation is not barred by 30 U.S.C. § 611 (1970).

United States v. Melvin McCormick, 27 IBLA 65 (Sept. 29, 1976)

In a contest of a mining claim located for common variety mineral materials prior to July 23, 1955, after which such locations were proscribed by law, where there has been no mining and no sales, the test of the validity of the claim is whether the claimant(s) could have mined and marketed the material profitably prior to that date and thereafter. The evidence tending to so show must relate to what a prudent man would have been reasonably justified in doing based upon the actual known circumstances at the time, not upon what he might have done if the proper conditions had then prevailed.

United States v. J. R. Osborne, et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

In order to establish that a type of stone material is not a common variety under the Act of July 23, 1955, a mining claimant must demonstrate that: (1) the mineral deposit has a unique property, and (2) the unique property gives the deposit a distinct and special value. Where evidence establishes that geodes in a particular deposit have unique properties distinguishable from other types of stones which give the deposit of geodes a distinct and special value, the fact that the geodes may be similar to geodes from other areas which have similar properties and values is not sufficient evidence to establish that the deposit of geodes is a common variety of stone within the meaning of the Act of July 23, 1955.

United States v. Glenn C. Bolinder and L. O. Turner, et al., 28 IBLA 187 (Dec. 6, 1976) 83 I.D. 609

Special Value

In order to prove that stone containing feldspar used for landscaping and building stone purposes is not a common variety of stone under the Act of July 23, 1955, a mining claimant must demonstrate that: (1) the mineral deposit has a unique property, and (2) the unique property gives the deposit a distinct and special value. In the event the mining claimant does not establish that these criteria are met, the Administrative Law Judge may

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Special Value--Continued

properly hold that the stone cannot be classified as locatable under the mining laws because it is a common variety.

United States v. Robert W. Beal, 23 IBLA 378 (Feb. 4, 1976)

Whether a deposit of building stone is an uncommon variety locatable under the mining laws after sec. 3 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 611 (1970), depends on whether the deposit has a property giving it a distinct and special value as compared with other deposits of stone used for similar purposes.

In determining whether a deposit of building stone is a common or uncommon variety under sec. 3 of the Surface Resources Act, 30 U.S.C. § 611 (1970), a special and distinct value of a building stone may be reflected by a higher market value in comparison with deposits of common varieties, or by reduced costs or overhead so that the profit would be substantially more while the market price would remain competitive.

United States v. John W. Pope, 25 IBLA 199 (June 16, 1976)

In determining whether a deposit of mineral aggregate is a common variety where it is used for the same purposes for which common, ordinary aggregates are used, the deposit must be shown to have some rare or unique physical property which gives the material a special and distinct value for such use. Special and distinct value may be reflected by a higher market price in comparison with other aggregates or, alternatively, by reduced costs of overhead so that the profit to the producer would be substantially more while the market price remained competitive with material from other sources.

United States v. Melvin McCormick, 27 IBLA 65 (Sept. 29, 1976)

In determining whether a deposit of building stone is a common or uncommon variety under the Surface Resources Act, 30 U.S.C. § 611 (1970), a special and distinct value of a building stone may be reflected by a higher market value in comparison with deposits of common varieties, or by reduced costs or overhead so that the profit would be substantially more while the market price would remain competitive.

United States v. John W. Pope (On Reconsideration), 27 IBLA 133 (Sept. 30, 1976)

Unique Property

In order to prove that stone containing feldspar used for landscaping and building stone

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Unique Property--Continued

purposes is not a common variety of stone under the Act of July 23, 1955, a mining claimant must demonstrate that: (1) the mineral deposit has a unique property, and (2) the unique property gives the deposit a distinct and special value. In the event the mining claimant does not establish that these crite-

properly hold that the stone cannot be classified as locatable under the mining laws because it is a common variety.

United States v. Robert W. Beal, 23 IBLA 378 (Feb. 4, 1976)

Whether a deposit of building stone is an uncommon variety locatable under the mining laws after sec. 3 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 611 (1970), depends on whether the deposit has a property giving it a distinct and special value as compared with other deposits of stone used for similar purposes.

In determining whether a deposit of building stone is a common or uncommon variety under sec. 3 of the Surface Resources Act, 30 U.S.C. § 611 (1970), a special and distinct value of a building stone may be reflected by a higher market value in comparison with deposits of common varieties, or by reduced costs or overhead so that the profit would be substantially more while the market price would remain competitive.

United States v. John W. Pope, 25 IBLA 199 (June 16, 1976)

In determining whether a deposit of building stone is a common or uncommon variety under the Surface Resources Act, 30 U.S.C. § 611 (1970), a special and distinct value of a building stone may be reflected by a higher market value in comparison with deposits of common varieties, or by reduced costs of overhead so that the profit would be substantially more while the market price would remain competitive.

United States v. John W. Pope (On Reconsideration), 27 IBLA 133 (Sept. 30, 1976)

CONTESTS

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

MINING CLAIMS--Continued

CONTESTS--Continued

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

United States v. Ruth Arcand, et al., 23 IBLA 226 (Jan. 9, 1976)

The Department of the Interior has the right to contest the validity of an unpatented mining claim at any time until patent issues.

A judgment is not conclusive of a fact erroneously assumed when the fact was not actually litigated and determination thereof was not essential to the decision.

The doctrine of collateral estoppel will not bar the administrative contest of the validity of five mining claims which, together with another claim, were the subject of previous condemnation actions for the taking of a temporary exclusive easement over the claims, where the issue of the validity of the individual claims was not actually litigated and it was wholly unnecessary for the Court to adjudicate that issue in rendering its judgment.

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimant concerning the validity of the claim with the intention that the claimant should act in reliance thereon, with the result that the claimant was thereby induced to do so, to his ultimate damage.

There can be no waiver of the Secretary's right to contest a mining claim believed to be invalid without a showing of an authority to make such a waiver and an intention to do so.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

When the Government contests a mining claim, it has assumed the burden of presenting a prima facie case that the claim is invalid; when it has done so, the burden then devolves on the mining claimant to prove by a preponderance of the evidence that the claim is valid.

United States v. Robert W. Beal, 23 IBLA 378 (Feb. 4, 1976)

MINING CLAIMS--Continued

CONTESTS--Continued

Where a contestee makes a timely response to a government complaint in a mining contest, which can reasonably be construed as a general denial of the allegations contained in the complaint, the response will be considered a sufficient answer within the contemplation of the regulations. The allegations then cannot be taken as admitted and the mining claim declared null and void without a hearing.

United States v. Cliff Libby, 24 IBLA 39 (Feb. 19, 1976)

The Board of Land Appeals may set aside a previous Departmental decision, which declared mining claims invalid for lack of discovery, and remand the case for a further hearing, where contestee submitted a Petition for Reconsideration with affidavits alleging that, since the hearing, the claims have been mined by lessees who have approximately 10,000 tons of minable ore blocked out with assays averaging from 6 to 8 pounds of mercury per ton of ore.

United States v. Evelyn M. Kiggins, et al., 24 IBLA 187 (Mar. 18, 1976)

Lands within national parks are not subject to mining location except where specifically authorized by law. 43 CFR 3811.2-2. However, lands within a national forest remain open to location and entry under the mining laws. 16 U.S.C. § 478 (1970). Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If the claim was not supported at the date of withdrawal for the national park by such a discovery, the land within the claims located in the park would not be excepted from the effect of the withdrawal.

United States v. Wallace W. Vaux, 24 IBLA 289 (Apr. 1, 1976)

When a government mineral examiner testifies that he has examined the exposed workings on a claim without finding sufficient mineral values to support the discovery of a valuable mineral deposit, a prima facie case of lack of discovery has been made.

United States v. John M. Tappan, Jr., et al., 25 IBLA 1 (May 5, 1976)

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when

MINING CLAIMS--Continued

CONTESTS--Continued

a qualified government mining examiner testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable mineral deposit.

United States v. Robert L. Taylor, 25 IBLA 21 (May 5, 1976)

When the Government contests a mining claim on a charge of no discovery it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case has been established.

A mining claim is a claim to property which may not be declared invalid without proper notice and an adequate opportunity for an agency hearing in accordance with due process of law. That due process consists of notice and opportunity for hearing, and it suffices if the claimant is afforded the opportunity to be present and heard. The fact that the claimant, after filing a timely answer to the contest complaint, refused to attend that hearing and produce evidence does not vitiate the due process he has received.

United States v. Carl Bellamy, 25 IBLA 50 (May 14, 1976)

Under the mining law, discovery of a valuable mineral deposit is the sine qua non for a valid mining claim. Even if location of a mining claim appears not to be supported by discovery, a cloud is cast upon the United States' title, which the Government may seek to remove by bringing a contest to determine whether the claim is valid.

In a mining contest, the mining claimant is the proponent of a rule or order that he has complied with the mining laws entitling him to validation of the claim, and the claimant has the ultimate burden of proof. The Government has assumed the burden of going forward with sufficient evidence to establish a prima facie case of invalidity. When this has been done, the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

Where the Government fails to present a prima facie case, a contestee, upon timely motion,

MINING CLAIMS--Continued

CONTESTS--Continued

may move to dismiss the case and then rest. If, however, he goes forward and presents evidence, that evidence will be considered as part of the entire evidentiary record. Therefore, even if the Government has failed to make a satisfactory prima facie case, or the case is weak, contestee's evidence may be used against him to establish that case. Furthermore, where contestee chooses to rebut the case, he must do so by a preponderance of the evidence, bearing the risk of nonpersuasion if he fails.

United States v. Alex Bechtold, 25 IBLA 77 (June 1, 1976)

A civil action in a federal district court condemning a mining claim for a period of years for the exclusive use of the United States does not bar a subsequent contest by the Department of the Interior challenging the validity of the claim.

United States v. The American Fluorspar Group, Inc., 25 IBLA 136 (June 7, 1976)

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of the evidence that a discovery has been made.

Where the Government contests a mining claim, official notice of a change in the published price of gold from that given at the hearing, as set forth in the evidence, may be taken by both the Administrative Law Judge and the Board of Land Appeals, but official notice cannot be given to asserted "modern methods of extraction of gold."

United States v. Gold Placers, Inc., 25 IBLA 368 (July 6, 1976)

The right to a hearing on disputed issues of fact involving mining claims includes the right to adequate notice of the grounds upon which a claim's invalidity is asserted.

A Government contest complaint which asserts the invalidity of a claim because of insufficient quantity and quality of the located mineral within the limits of the claim does not put into issue the existence of excess reserves within the limits of a claim.

Where the alleged ground of invalidity of a claim was not charged in the complaint, and was not a matter of contention at the hearing, invalidation of the claim on such ground is improper, despite some evidence to support it, absent an opportunity for the contestee to present evidence on such issue where it appears that there is other pertinent evidence that may be submitted on that issue.

Where on appeal from a decision sustaining the Government's challenge of a patent application it is determined that the alleged ground

MINING CLAIMS--Continued

CONTESTS--Continued

of invalidity was one not raised in the complaint or at the hearing, the decision rejecting the patent application will be set aside and the Government will be afforded an opportunity to amend its complaint to embrace the charge. Where the Government does amend its complaint the mineral claimant will be granted the right to an evidentiary hearing on such issue.

United States v. Robert B. McElwaine, 26 IBLA 20 (July 7, 1976)

When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. Richard C. Reynders and Carol J. Reynders, 26 IBLA 131 (July 30, 1976)

A person who admits he has no interest in a mining claim which has been held invalid for failure of the named contestee to file an answer other than he disputes a charge that the land in the contested claim is not mineral in character or that the date of a withdrawal is incorrect is not adversely affected by the decision and has no standing to appeal.

United States v. William Robinson & William McCaskill, Phelps Dodge Corporation, 26 IBLA 137 (Aug. 2, 1976)

The Department of the Interior may contest the validity of any unpatented mining claim located on public land, including claims located within powersite withdrawals; the Department's authority to contest the validity of mining claims was not diminished by the Mining Claims Rights Restoration Act of 1955.

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

Although, in a mining claim contest, the Government may make a prima facie case of no discovery by the testimony of a mineral examiner that he has been on the land in issue and saw nothing of mineral value, a prima facie case is ordinarily not made where it is established that the examiner was not on the land in issue.

In a mining claim contest where a contestee is of the opinion that the Government did not

MINING CLAIMS--Continued

CONTESTS--Continued

make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the Administrative Law Judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

In a mining claim contest where the evidence of a valuable mineral deposit, submitted by contestee at a hearing, bearing on the validity of a mining claim, has greater probative weight than that offered by the Government, it is proper to find that contestee has preponderated and to dismiss, without prejudice, the complaint alleging no discovery of a valuable mineral deposit.

United States v. Arizona Mining and Refining Company, Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

Where an attorney files an answer to a contest concerning mining claims on behalf of certain individuals, who, during the pendency of the contest proceedings, transfer their interests in the mining claims to a corporation of which they are major stockholders and Directors, and the attorney represents those individuals and the corporation at the contest hearing, the corporation is bound by the determination reached therein, even though the corporation may not have received actual notice of the contest.

A request for postponement made more than 10 days prior to a hearing is properly denied where there has been no showing of good cause and proper diligence. A contestee's request for postponement is properly denied when (1) a contestee only seeks postponement in order to pursue an exchange of land for the claims; and (2) the Administrative Law Judge rules that the contestant may seek to dismiss the contest if an exchange is contemplated and the contestant does not wish to abate the contest proceedings.

A request for postponement made at a hearing or within 10 days of a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a party's assertion that it has not had adequate opportunity to prepare a defense where such difficulty could have been anticipated before the request was made.

Where a mineral examiner testifies on the basis of his examination of mining claims that the mineral values on the claims are insufficient

MINING CLAIMS--Continued

CONTESTS--Continued

to support a finding of discovery, a prima facie case against the validity of the claims has been established, and where the contestees walked out of the hearing and did not submit evidence to rebut the prima facie case, the claims must be declared invalid.

The Secretary of the Interior has the authority to determine the validity of mining claims upon adequate notice and opportunity for hearing.

United States v. Mine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

Where the testimony and conclusions of an expert witness are based on careful examination of a mining claim by appropriate scientific methods, they will be accepted into evidence and given appropriate weight regardless of the fact that the witness may not be registered within that particular state as an expert in his field.

When, as a result of direct proceedings against mining claims, the Department determines that no discovery has been made, the claims must be declared null and void notwithstanding that they are located on land patented under the Stock-raising Homestead Act and the contest was privately initiated.

Cabot Sedgwick, et al. v. O. M. Parker, 27 IBLA 256 (Oct. 20, 1976)

In a government contest of the validity of a mining claim it is the claimants who are the true proponents of a rule or order, namely, that they have complied with the mining laws and have qualified to receive fee title to the land.

In a contest of a mining claim located for common variety mineral materials prior to July 23, 1955, after which such locations were proscribed by law, where there has been no mining and no sales, the test of the validity of the claim is whether the claimant(s) could have mined and marketed the thereafter. The evidence tending to so show must relate to what a prudent man would have been reasonably justified in doing based upon the actual known circumstances at the time, not upon what he might have done if the proper conditions had then prevailed.

While the existence of other land values does not qualify a locator's rights under the mining law if he has a valid claim, evidence of such other values may be considered in assessing the weight and credibility to be accorded the locator's testimony in determining whether a discovery has been made, and may be a factor in evaluating his bona fide intention to develop a mining operation.

In determining whether a profitable market existed for material from a particular mining claim from which no material has been sold, a hypothetical market must be created in which the new material plays its part. The new

MINING CLAIMS--Continued

CONTESTS--Continued

material from the claim at issue must be included with that from all other known potentially competitive sources in calculating the factor of supply. If the supply so calculated amounts to a superabundance and so overwhelms the existing demand as to reduce the value or profit increment to a level below that which would prove attractive to a prudent man, the material cannot be said to be marketable at a profit.

United States v. J. R. Osborne, et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

In a mining contest, a matter not charged in the complaint may only be considered by the Administrative Law Judge if it was raised at the hearing without objection and the contestee was fully aware that the issue was raised.

United States v. Glenn C. Bolinder and L. O. Turner, et al., 28 IBLA 187 (Dec. 6, 1976) 83 I.D. 609

DETERMINATION OF VALIDITY

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

No discovery of a valuable mineral deposit is demonstrated on a placer mining claim which yields small amounts of gold from stream beds but which is suitable only for recreation mining because it could never be expected to produce an economic return in any way commensurable with the labor and cost involved in such production.

United States v. Ruth Arcand, et al., 23 IBLA 226 (Jan. 9, 1976)

A discovery exists where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

The Act of July 23, 1955, 30 U.S.C. § 611 (1970), removed common varieties of cinder from location under the mining laws; thus, it is incumbent upon one who located a claim prior to that date for a common variety of cinder to show that all the requirements for a discovery, including a showing that the materials could have been extracted, removed,

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

and marketed at a profit, had been met by that date.

Material which is suitable only for fill purposes, road based, or comparable uses is not locatable under the mining laws, and even if the material is suitable for other purposes, its sale for the above uses cannot be considered in determining its marketability to establish the value of the deposit as mineral. By the same token, it is improper to consider the market demand for such uses for the purpose of determining what volume of mineral material a prudent locator might claim in the reasonable anticipation of market demand for legitimate mineral uses in the foreseeable future, reasonably projected.

Where it has been shown as to a number of mining claims located for cinders for which application for patent has been filed, that the amount of the deposits on the claims is excessively large in relation to the market that exists, only those claims can be found valid which by reason of location and volume and quality of deposits would make the most feasible mining operation and have a reasonable prospect of success; the remaining claims must be held invalid for lack of discovery.

United States v. Melton E. Baker, 23 IBLA 319 (Jan. 19, 1976)

The doctrine of collateral estoppel will not bar the administrative contest of the validity of five mining claims which, together with another claim, were the subject of previous condemnation actions for the taking of a temporary exclusive easement over the claims, where the issue of the validity of the individual claims was not actually litigated and it was wholly unnecessary for the Court to adjudicate that issue in rendering its judgment.

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimant concerning the validity of the claim with the intention that the claimant should act in reliance thereon, with the result that the claimant was thereby induced to do so,.to his ultimate damage.

There can be no waiver of the Secretary's right to contest a mining claim believed to be invalid without a showing of an authority to make such a waiver and an intention to do so.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

In order to prove that stone containing feldspar used for landscaping and building stone purposes is not a common variety of stone under the Act of July 23, 1955, a mining claimant must demonstrate that: (1) the mineral deposit has a unique property, and (2) the

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

unique property gives the deposit a distinct and special value. In the event the mining claimant does not establish that these criteria are met, the Administrative Law Judge may properly hold that the stone cannot be classified as locatable under the mining laws because it is a common variety.

Ground feldspar, used as a soil conditioner or soil amendment, is not a locatable mineral deposit under the general mining laws in the absence of a showing that the mineral meets the test of United States v. Bunkowski, 5 IBLA 102, 113-16, 79 I.D. 43, 48-49 (1972), namely, that the mineral is found to be not just a physical amendment to the soil, but rather a chemical amendment which alters and improves soil or plant chemistry.

In order for a mining claim to be valid, there must be discovered within the limits of the claim a valuable mineral deposit. A discovery exists where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. This test, the prudent man rule, has been refined to require a showing that the mineral in question can be extracted, removed and presently marketed at a profit.

Where a mining claimant fails to submit adequate evidence as to the expected quantity and specifications of the local demand for industrial quality feldspar, does not receive any payment for inferior quality feldspar attempted to be sold for industrial use, and does not establish that the local market demand would justify the costs of developing a mill capable of processing industrial quality feldspar from the subject claim, the mining claimant has failed to satisfy the prudent man-marketability test which requires a showing that a reasonable prospect of success in developing a valuable mine exists. Where the anticipated costs and revenues of an alleged profitable mining operation are not based on reliable probative evidence, but only on mere speculation, a mining claim cannot be found valid.

United States v. Robert W. Beal, 23 IBLA 378 (Feb. 4, 1976)

Lands within national parks are not subject to mining location except where specifically authorized by law. 43 CFR 3811.2-2. However, lands within a national forest remain open to location and entry under the mining laws. 16 U.S.C. § 478 (1970). Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If the claim was not supported at the date of withdrawal for the national park by such a discovery, the land within the claims located in the park would not be excepted from the effect of the withdrawal.

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

Under federal law, a valid mining location cannot be made without a discovery of a valuable mineral deposit within the limits of the claim. The long standing test to determine whether there has been a discovery of a valuable mineral deposit is the "prudent man" test. To meet this test there must be sufficient mineralization within the claims to warrant a man of ordinary prudence to expend his time and means with a reasonable expectation of developing a valuable mine. For a lode claim, there must be tangible proof of the existence of a vein or veins bearing sufficient mineralization to meet the test.

Before a finding of discovery can be warranted, it must be shown as a present fact that the claim is valuable for minerals. Evidence of past profitable mining is not proof the claims are presently profitable. The claim may have been worked out or have lost its value because of change in economic conditions.

High assay samples alone are not evidence of a discovery. The nature of the samples yielding the high values must be considered. Where neither the date of the samples nor the nature of the samples submitted for assay is known, those assays cannot be considered as representative of a valuable mineral deposit within the limits of a mining claim.

A mining claimant's belief in the existence of mineral on a claim is not sufficient to constitute discovery. The prudent man rule imposes an objective standard, and the fact that the claimant may be willing to expend his labor and means is not adequate.

United States v. Wallace W. Vaux, 24 IBLA 289 (Apr. 1, 1976)

When a government mineral examiner testifies that he has examined the exposed workings on a claim to support the discovery of a valuable mineral deposit, a prima facie case of lack of discovery has been made.

United States v. John M. Tappan, Jr., et al., 25 IBLA 1 (May 5, 1976)

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified government mining examiner testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable mineral deposit.

United States v. Robert L. Taylor, 25 IBLA 21 (May 5, 1976)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

Under the mining law, discovery of a valuable mineral deposit is the sine qua non for a valid mining claim. Even if location of a mining claim appears not to be supported by discovery, a cloud is cast upon the United States' title, which the Government may seek to remove by bringing a contest to determine whether the claim is valid.

In a mining contest, the mining claimant is the proponent of a rule or order that he has complied with the mining laws entitling him to validation of the claim, and the claimant has the ultimate burden of proof. The Government has assumed the burden of going forward with sufficient evidence to establish a prima facie case of invalidity. When this has been done, the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

Occasional assay samples of material from a lode mining claim containing high values of gold are not conclusive evidence of a valid discovery. Other factors must be considered, such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values. To be meaningful, the samples must be representative of the mineral deposit, not simply selective showings of the best mineralization.

Before a finding of discovery of a valuable mineral deposit within a mining claim is warranted, it must be shown as a present fact that the claim is valuable for minerals. Evidence of past profitable mining is not proof the claims are presently profitable. The claim may have been worked out or have lost its value because of change in economic conditions.

Evidence of mineralization which may justify further exploration but not development of actual mining operations is not sufficient to establish that a discovery of a valuable mineral deposit has been made. The prudent man test is objective in nature. Therefore, a claimant's hopes and beliefs are not sufficient reasons to constitute a discovery. The facts must be such as would justify a prudent man to develop the claim.

A previous determination by the Department of the Interior in a proceeding different from a mining claim contest that land was mineral in character is not evidence of a discovery of a valuable mineral deposit in a mining contest.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

A civil action in a federal district court condemning a mining claim for a period of years for the exclusive use of the United States does not bar a subsequent contest by the Department of the Interior challenging the validity of the claim.

United States v. The American Fluorspar Group, Inc., 25 IBLA 136 (June 7, 1976)

To constitute a discovery upon a mining claim there must be physically exposed within the limits of the claim minerals in such quality and quantity to warrant a prudent man in expending his labor and means with a reasonable prospect of success in developing a valuable mine.

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of the evidence that a discovery has been made.

Where the Government contests a mining claim, official notice of a change in the published price of gold from that given at the hearing, as set forth in the evidence, may be taken by both the Administrative Law Judge and the Board of Land Appeals, but official notice cannot be given to asserted "modern methods of extraction of gold."

United States v. Gold Placers, Inc., 25 IBLA 368 (July 6, 1976)

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim in order to add to retirement income. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

United States v. Richard C. Reynders and Carol J. Reynders, 26 IBLA 131 (July 30, 1976)

The fact that assessment work has been performed on a mining claim does not estop the Government from determining the validity of a claim by proper proceedings giving adequate notice and an opportunity for a hearing where there are disputed determinative facts. However, where the claim was located after land has been withdrawn from mining, it is proper for the Bureau of Land Management to declare a claim null and void ab initio without a hearing.

Roy R. Cummins, 26 IBLA 223 (Aug. 17, 1976)

When the Government contests a mining claim, by practice it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden of going forward then shifts to the claimant to show by a preponderance of the evidence that his claim

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

is valid. Likewise, a millsite claimant has the burden of establishing the validity of his claim by a preponderance of the evidence.

A prima facie case of lack of discovery within a mining claim is established when a Government mineral examiner testifies that he has examined the claim and found mineralization insufficient to support a finding of discovery.

United States v. Aloys A. Dietemann and Doris E. L. Dietemann, 26 IBLA 356 (Sept. 8, 1976)

In a mining claim contest where the evidence of a valuable mineral deposit, submitted by contestee at a hearing, bearing on the validity of a mining claim, has greater probative weight than that offered by the Government, it is proper to find that contestee has preponderated and to dismiss, without prejudice, the complaint alleging no discovery of a valuable mineral deposit.

United States v. Arizona Mining and Refining Company, Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

Where a mineral examiner testifies on the basis of his examination of mining claims that the mineral values on the claims are insufficient to support a finding of discovery, a prima facie case against the validity of the claims has been established, and where the contestees walked out of the hearing and did not submit evidence to rebut the prima facie case, the claims must be declared invalid.

The Secretary of the Interior has the authority to determine the validity of mining claims upon adequate notice and opportunity for hearing.

United States v. Mine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

When, as a result of direct proceedings against mining claims, the Department determines that no discovery has been made, the claims must be declared null and void notwithstanding that they are located on land patented under the Stock-raising Homestead Act and the contest was privately initiated.

Cabot Sedgwick, et al. v. O. M. Parker, 27 IBLA 256 (Oct. 20, 1976)

Where, at the hearing of a mining claim contest, the transcript of a previous hearing in another related contest is received in evidence, those portions of the transcript which are relevant and material to the case at hand may form, or contribute to, the basis for the decision in the case, regardless of which party introduced the transcript in evidence.

Material which is principally valuable for use as fill, sub-base or ballast, for which ordinary earth or rock may be used, is not

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

locatable under the mining laws, and even if the material is suitable for other purposes, its value for the above uses cannot be considered in determining its marketability as a valuable mineral deposit within the ambit of the general mining law.

In a government contest of the validity of a mining claim it is the claimants who are the true proponents of a rule or order, namely, that they have complied with the mining laws and have qualified to receive fee title to the land.

While the existence of other land values does not qualify a locator's rights under the mining law if he has a valid claim, evidence of such other values may be considered in assessing the weight and credibility to be accorded the locator's testimony in determining whether a discovery has been made, and may be a factor in evaluating his bona fide intention to develop a mining operation.

In determining whether a profitable market existed for material from a particular mining claim from which no material has been sold, a hypothetical market must be created in which the new material plays its part. The new material from the claim at issue must be included with that from all other known potentially competitive sources in calculating the factor of supply. If the supply so calculated amounts to a superabundance and so overwhelms the existing demand as to reduce the value or profit increment to a level below that which would prove attractive to a prudent man, the material cannot be said to be marketable at a profit.

United States v. J. R. Osborne, et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

DISCOVERY

Generally

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Where a mining claim occupies land which has subsequently been withdrawn from the operation of the mining law, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit thereafter increased due to a change in the market.

No discovery of a valuable mineral deposit is demonstrated on a placer mining claim which yields small amounts of gold from stream beds

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

but which is suitable only for recreation mining because it could never be expected to produce an economic return in any way commensurable with the labor and cost involved in such production.

United States v. Ruth Arcand, et al., 23 IBLA 226 (Jan. 9, 1976)

A discovery exists where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Where it has been shown as to a number of mining claims located for cinders for which application for patent has been filed, that the amount of the deposits on the claims is excessively large in relation to the market that exists, only those claims can be found valid which by reason of location and volume and quality of deposits would make the most feasible mining operation and have a reasonable prospect of success; the remaining claims must be held invalid for lack of discovery.

United States v. Melton E. Baker, 23 IBLA 319 (Jan. 19, 1976)

A lode mining claim is properly declared null and void in the absence of a showing of a discovery, on the particular claim, of a lode or vein bearing mineral which would warrant a prudent man in further expenditure of labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

When the Government contests a mining claim, it has assumed the burden of presenting a prima facie case that the claim is invalid; when it has done so, the burden then devolves on the mining claimant to prove by a preponderance of the evidence that the claim is valid.

In order for a mining claim to be valid, there must be discovered within the limits of the claim a valuable mineral deposit. A discovery exists where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. This test, the prudent man rule, has been refined to require a showing that the mineral in question can be extracted, removed and presently marketed at a profit.

United States v. Robert W. Beal, 23 IBLA 378 (Feb. 4, 1976)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

To constitute a discovery of a valuable mineral deposit under the mining laws, there must be sufficient mineralization shown to warrant a prudent man to invest his time and money with the reasonable expectation of developing a valuable mine.

United States v. George R. Edeline, et al., 24 IBLA 34 (Feb. 17, 1976)

Evidence of mineralization which may justify further exploration, but not development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. Gary C. Fichtner, et al., 24 IBLA 128 (Mar. 3, 1976)

Lands within national parks are not subject to mining location except where specifically authorized by law. 43 CFR 3811.2-2. However, lands within a national forest remain open to location and entry under the mining laws. 16 U.S.C. § 478 (1970). Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If the claim was not supported at the date of withdrawal for the national park by such a discovery, the land within the claims located in the park would not be excepted from the effect of the withdrawal.

Under federal law, a valid mining location cannot be made without a discovery of a valuable mineral deposit within the limits of the claim. The long standing test to determine whether there has been a discovery of a valuable mineral deposit is the "prudent man" test. To meet this test there must be sufficient mineralization within the claims to warrant a man of ordinary prudence to expend his time and means with a reasonable expectation of developing a valuable mine. For a lode claim, there must be tangible proof of the existence of a vein or veins bearing sufficient mineralization to meet the test.

Before a finding of discovery can be warranted, it must be shown as a present fact that the claim is valuable for minerals. Evidence of past profitable mining is not proof the claims are presently profitable. The claim may have been worked out or have lost its value because of change in economic conditions.

High assay samples alone are not evidence of a discovery. The nature of the samples yielding the high values must be considered. Where neither the date of the samples nor the nature of the samples submitted for assay is known, those assays cannot be considered as representative of a valuable mineral deposit within the limits of a mining claim.

A mining claimant's belief in the existence of mineral on a claim is not sufficient to

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

constitute discovery. The prudent man rule imposes an objective standard, and the fact that the claimant may be willing to expend his labor and means is not adequate.

United States v. Wallace W. Vaux, 24 IBLA 289 (Apr. 1, 1976)

A mining claim contested under sec. 5 of the Surface Resources Act, as amended, 30 U.S.C. § 613 (1970), and a discrete claim contested under the general mining law, will be held subject to the provisions of the Surface Resources Act, and null and void respectively, where the contestees fail to submit evidence which preponderates over the Government's case that a discovery of a valuable mineral deposit has not been made on either claim.

United States v. Signa Lauch, et al., 24 IBLA 354 (Apr. 26, 1976)

Evidence of mineralization which may justify further exploration, but not development of a mine, does not establish the discovery of a valuable mineral deposit.

State mining laws relating to discovery may only add to the federal mining law; such laws cannot diminish the federal requirements for the discovery of a valuable mineral deposit on a mining claim located on federal lands.

United States v. John M. Tappan, Jr., et al., 25 IBLA 1 (May 5, 1976)

The discovery of a "valuable mineral deposit" has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Evidence which will not justify development of a claim but may justify further exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. Robert L. Taylor, 25 IBLA 21 (May 5, 1976)

Under the mining law, discovery of a valuable mineral deposit is the sine qua non for a valid mining claim. Even if location of a mining claim appears not to be supported by discovery, a cloud is cast upon the United States' title, which the Government may seek to remove by bringing a contest to determine whether the claim is valid.

In making a prima facie case of lack of discovery of a valuable mineral deposit, the Government has no duty to do the discovery

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

work for the mining claimant. It is incumbent upon the claimant to keep his discovery points available for inspection. A prima facie case is established when a Government mineral examiner gives his expert opinion that he examined the claim and found insufficient values to support a finding of discovery.

A previous determination by the Department of the Interior in a proceeding different from a mining claim contest that land was mineral in character is not evidence of a discovery of a valuable mineral deposit in a mining contest.

Before a finding of discovery of a valuable mineral deposit within a mining claim is warranted, it must be shown as a present fact that the claim is valuable for minerals. Evidence of past profitable mining is not proof the claims are presently profitable. The claim may have been worked out or have lost its value because of change in economic conditions.

Evidence of mineralization which may justify further exploration but not development of actual mining operations is not sufficient to establish that a discovery of a valuable mineral deposit has been made. The prudent man test is objective in nature. Therefore, a claimant's hopes and beliefs are not sufficient reasons to constitute a discovery. The facts must be such as would justify a prudent man to develop the claim.

Occasional assay samples of material from a lode mining claim containing high values of gold are not conclusive evidence of a valid discovery. Other factors must be considered, such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values. To be meaningful, the samples must be representative of the mineral deposit, not simply selective showings of the best mineralization.

The "prudent man" test is the longstanding test to determine whether there has been a discovery of a valuable mineral deposit. To meet this test there must be sufficient mineralization within a claim to warrant a man of ordinary prudence to expend his time and means with a reasonable expectation of developing a valuable mine.

In determining whether there has been a discovery of a valuable mineral deposit under the mining laws, the mere showing of a vein (or veins) carrying some erratic mineral values is not sufficient to establish a valuable mineral deposit where the existence of such a deposit can only be inferred. Geological inferences may only be relied upon in evaluating the extent and potential value of a particular exposed mineral deposit under the prudent man test of discovery and may not be employed as a substitute for the actual finding of a mineral deposit.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

As a prerequisite for the validity of a lode mining claim, there must be found within the limits of the claim a vein or lode of the quartz, or other rock in place, bearing mineral of such quantity and quality that a prudent person would expend his time and means with a reasonable prospect of success in developing a valuable mine. Evidence which merely shows that further exploration is needed to "discover" the valuable mineral deposit does not meet the prudent man test.

United States v. The American Fluorspar Group, Inc., 25 IBLA 136 (June 7, 1976)

To constitute a discovery upon a mining claim there must be physically exposed within the limits of the claim minerals in such quality and quantity to warrant a prudent man in expending his labor and means with a reasonable prospect of success in developing a valuable mine.

United States v. Gold Placers, Inc., 25 IBLA 368 (July 6, 1976)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

A discovery of a valuable mineral deposit may be lost in many ways including, but not limited to, forgetting the situs of the deposit, exhaustion of the deposit, or loss of a market for the mineral.

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim in order to add to retirement income. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

United States v. Richard C. Reynders and Carol J. Reynders, 26 IBLA 131 (July 30, 1976)

A lode mining claim is properly declared null and void in the absence of a showing of a discovery on the claim of a lode or vein bearing mineral which would warrant a prudent man to further expend his labor and means in the reasonable expectation of developing a valuable mine.

Evidence of mineralization which may justify further exploration, but not development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. Ben Hanson, 26 IBLA 300 (Aug. 27, 1976)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

In order to constitute a discovery upon a mining claim there must be physically exposed within the limits of the claim minerals in such quality and quantity as to justify a prudent man in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

A Government mineral examiner in evaluating a mining claim is under no duty to undertake discovery work or to explore beyond the current working of a claim and it is incumbent upon the mining claimant to keep discovery points available for inspection by a Government mineral examiner.

United States v. Aloys A. Dietemann and Doris E. L. Dietemann, 26 IBLA 356 (Sept. 8, 1976)

A discovery exists where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Minerals which no prudent person will extract because there is no demand for them at a higher price than the cost of extraction and transportation generally cannot be classed as valuable.

United States v. Arizona Mining and Refining Company, Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a profitable mine.

Evidence of mineralization which may justify further exploration, but not development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

When, as a result of direct proceedings against mining claims, the Department determines that no discovery has been made, the claims must be declared null and void notwithstanding that they are located on land patented under the Stock-raising Homestead Act and the contest was privately initiated.

Cabot Sedgwick, et al. v. O. M. Parker, 27 IBLA 256 (Oct. 20, 1976)

Geologic Inference

Geological inference alone cannot support a determination under the mining laws that a discovery of a valuable mineral deposit has been made. The claimant must actually expose

MINING CLAIMS--Continued

DISCOVERY--Continued

Geologic Inference--Continued

a valuable mineral deposit physically within the limits of the claim.

United States v. Wallace W. Vaux, 24 IBLA 289 (Apr. 1, 1976)

In determining whether there has been a discovery of a valuable mineral deposit under the mining laws, the mere showing of a vein (or veins) carrying some erratic mineral values is not sufficient to establish a valuable mineral deposit where the existence of such a deposit can only be inferred. Geological inferences may only be relied upon in evaluating the extent and potential value of a particular exposed mineral deposit under the prudent man test of discovery and may not be employed as a substitute for the actual finding of a mineral deposit.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

Geological inferences may not alone be used to establish a discovery of a valuable mineral deposit, but if there is a showing of sufficient mineralization and there is satisfactory evidence to support such inferences, they may be used as a basis for estimating the probable extent and value of the mineral deposit.

United States v. The American Fluorspar Group, Inc., 25 IBLA 136 (June 7, 1976)

Marketability

Material which is suitable only for fill purposes, road based, or comparable uses is not locatable under the mining laws, and even if the material is suitable for other purposes, its sale for the above uses cannot be considered in determining its marketability to establish the value of the deposit as mineral. By the same token, it is improper to consider the market demand for such uses for the purpose of determining what volume of mineral material a prudent locator might claim in the reasonable anticipation of market demand for legitimate mineral uses in the foreseeable future, reasonably projected.

United States v. Melton E. Baker, 23 IBLA 319 (Jan. 19, 1976)

Where a mining claimant fails to submit adequate evidence as to the expected quantity and specifications of the local demand for industrial quality feldspar, does not receive any payment for inferior quality feldspar attempted to be sold for industrial use, and does not establish that the local market demand would justify the costs of developing a mill capable of processing industrial quality feldspar from the subject claim, the mining

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

claimant has failed to satisfy the prudent man-marketability test which requires a showing that a reasonable prospect of success in developing a valuable mine exists. Where the anticipated costs and revenues of an alleged profitable mining operation are not based on reliable probative evidence, but only on mere speculation, a mining claim cannot be found valid.

United States v. Robert W. Beal, 23 IBLA 378 (Feb. 4, 1976)

The testimony of a qualified geologist and professional mining evaluation engineer concerning the marketability of a deposit of sand and gravel at a particular time may be accorded substantial evidentiary weight under the standard in Verrue v. United States, 457 F.2d 1202 (9th Cir. 1972), if it is established that he was in the area at the time, had studied the local sand and gravel market and the factors which affected it, as well as the nature of the material and the methods and costs of removing, processing and marketing it.

Material which is principally valuable for use as fill, sub-base or ballast, for which ordinary earth or rock may be used, is not locatable under the mining laws, and even if the material is suitable for other purposes, its value for the above uses cannot be considered in determining its marketability as a valuable mineral deposit within the ambit of the general mining law.

In a contest of a mining claim located for common variety mineral materials prior to July 23, 1955, after which such locations were proscribed by law, where there has been no mining and no sales, the test of the validity of the claim is whether the claimant(s) could have mined and marketed the material profitably prior to that date and thereafter. The evidence tending to so show must relate to what a prudent man would have been reasonably justified in doing based upon the actual known circumstances at the time, not upon what he might have done if the proper conditions had then prevailed.

In determining whether a profitable market existed for material from a particular mining claim from which no material has been sold, a hypothetical market must be created in which the new material plays its part. The new material from the claim at issue must be included with that from all other known potentially competitive sources in calculating the factor of supply. If the supply so calculated amounts to a superabundance and so overwhelms the existing demand as to reduce the value or profit increment to a level below that which would prove attractive to a prudent man, the material cannot be said to be marketable at a profit.

United States v. J. R. Osborne, et al. (Supp. on Judicial Remand), 28 IBLA 13 (Nov. 8, 1976)

MINING CLAIMS--Continued

EXCESS RESERVES

Material which is suitable only for fill purposes, road based, or comparable uses is not locatable under the mining laws, and even if the material is suitable for other purposes, its sale for the above uses cannot be considered in determining its marketability to establish the value of the deposit as mineral. By the same token, it is improper to consider the market demand for such uses for the purpose of determining what volume of mineral material a prudent locator might claim in the reasonable anticipation of market demand for legitimate mineral uses in the foreseeable future, reasonably projected.

Where it has been shown as to a number of mining claims located for cinders for which application for patent has been filed, that the amount of the deposits on the claim is excessively large in relation to the market that exists, only those claims can be found valid which by reason of location and volume and quality of deposits would make the most feasible mining operation and have a reasonable prospect of success; the remaining claims must be held invalid for lack of discovery.

United States v. Melton E. Baker, 23 IBLA 319 (Jan. 19, 1976)

HEARINGS

Evidence offered on appeal from an initial decision by an Administrative Law Judge after a hearing in a mining contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

A further hearing may be ordered in a mining contest where the record is unsatisfactorily confusing and conflicting on the issue of quantity of minerals to satisfy the discovery test, a request for the rehearing has been made with an offer of proof which tends to show a new hearing might result in a different finding, and there has been no objection to the request.

United States v. George R. Edeline, et al., 24 IBLA 34 (Feb. 17, 1976)

Evidence tendered on appeal from an adverse decision in a mining claim contest cannot be considered except for the limited purpose of deciding whether a further hearing is warranted.

United States v. Gary C. Fichtner, et al., 24 IBLA 128 (Mar. 3, 1976)

The Board of Land Appeals may set aside a previous Departmental decision, which declared mining claims invalid for lack of discovery, and remand the case for a further hearing, where contestee submitted a Petition for Reconsideration with affidavits alleging that, since the hearing, the claims have been mined by lessees who have approximately 10,000 tons

MINING CLAIMS--Continued

HEARINGS--Continued

of minable ore blocked out with assays averaging from 6 to 8 pounds of mercury per ton of ore.

United States v. Evelyn M. Kiggins, et al., 24 IBLA 187 (Mar. 18, 1976)

A mining claim contested under sec. 5 of the Surface Resources Act, as amended, 30 U.S.C. § 613 (1970), and a discrete claim contested under the general mining law, will be held subject to the provisions of the Surface Resources Act, and null and void respectively, where the contestees fail to submit evidence which preponderates over the Government's case that a discovery of a valuable mineral deposit has not been made on either claim.

United States v. Signa Lauch, et al., 24 IBLA 354 (Apr. 26, 1976)

Evidence tendered on appeal from adverse decision in a mining claim contest can only be considered for the limited purpose of deciding whether a further hearing is warranted.

United States v. Robert L. Taylor, 25 IBLA 21 (May 5, 1976)

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore land in a reclamation withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the withdrawal. Furthermore, even if the withdrawal were revoked and the lands opened to entry, this action could not revive mining claims which were void when located while the withdrawal was in effect and the land closed to entry under the mining laws.

J. P. Hinds, et al., 25 IBLA 67 (June 1, 1976)
83 I.D. 275

Where the Government fails to present a prima facie case, a contestee, upon timely motion, may move to dismiss the case and then rest. If, however, he goes forward and presents evidence, that evidence will be considered as part of the entire evidentiary record. Therefore, even if the Government has failed to make a satisfactory prima facie case, or the case is weak, contestee's evidence may be used against him to establish that case. Furthermore, where contestee chooses to rebut the case, he must do so by a preponderance of the evidence, bearing the risk of nonpersuasion if he fails.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

MINING CLAIMS--Continued

HEARINGS--Continued

In proceedings before the department to determine the validity of a mining claim, notice and an opportunity for a hearing pursuant to the Administrative Procedure Act are required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

Beverly Trull, 25 IBLA 157 (June 10, 1976)

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

The right to a hearing on dispute issues of fact involving mining claims includes the right to adequate notice of the grounds upon which a claim's invalidity is asserted.

A Government contest complaint which asserts the invalidity of a claim because of insufficient quantity and quality of the located mineral within the limits of the claim does not put into issue the existence of excess reserves within the limits of a claim.

Where the alleged ground of invalidity of a claim was not charged in the complaint, and was not a matter of contention at the hearing, invalidation of the claim on such ground is improper, despite some evidence to support it, absent an opportunity for the contestee to present evidence on such issue where it appears that there is other pertinent evidence that may be submitted on that issue.

Where on appeal from a decision sustaining the Government's challenge of a patent application it is determined that the alleged ground of invalidity was one not raised in the complaint or at the hearing, the decision rejecting the patent application will be set aside and the Government will be afforded an opportunity to amend its complaint to embrace the charge. Where the Government does amend its complaint the mineral claimant will be granted the right to an evidentiary hearing on such issue.

United States v. Robert B. McElwaine, 26 IBLA 20 (July 7, 1976)

Evidence tendered on appeal from an adverse decision in a mining claim contest cannot be considered in the absence of a compelling showing that it could not be tendered at the hearing, and even then such evidence may only be considered for the purpose of determining whether a rehearing is warranted.

United States v. Richard C. Reynders and Carol J. Reynders, 26 IBLA 131 (July 30, 1976)

The fact that assessment work has been performed on a mining claim does not estop the Government from determining the validity of a claim by proper proceedings giving adequate notice and an opportunity for a hearing where

MINING CLAIMS--Continued

HEARINGS--Continued

there are disputed determinative facts. However, where the claim was located after land has been withdrawn from mining, it is proper for the Bureau of Land Management to declare a claim null and void ab initio without a hearing.

Roy R. Cummins, 26 IBLA 223 (Aug. 17, 1976)

A petition to reopen a hearing for submission of further evidence will be denied when the contestee offers no valid justification for the neglect to offer the evidence, which was or could have been available at the original hearing.

United States v. Ben Hanson, 26 IBLA 300 (Aug. 27, 1976)

In a mining claim contest where the evidence of a valuable mineral deposit, submitted by contestee at a hearing, bearing on the validity of a mining claim, has greater probative weight than that offered by the Government, it is proper to find that contestee has preponderated and to dismiss, without prejudice, the complaint alleging no discovery of a valuable mineral deposit.

United States v. Arizona Mining and Refining Company, Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

In a proceeding before the Department to determine the validity of a mining claim, notice and an opportunity for an evidentiary hearing is required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

W. A. Todd, A. B. Johnson, 28 IBLA 180 (Dec. 1, 1976)

LANDS SUBJECT TO

Lands within national parks are not subject to mining location except where specifically authorized by law. 43 CFR 3811.2-2. However, lands within a national forest remain open to location and entry under the mining laws. 16 U.S.C. § 478 (1970). Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If the claim was not supported at the date of withdrawal for the national park by such a discovery, the land within the claims located in the park would not be excepted from the effect of the withdrawal.

United States v. Wallace W. Vaux, 24 IBLA 289 (Apr. 1, 1976)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

When title to an entire in-place school section has passed to the state, the United States no longer has a property interest therein and the land is no longer subject to location under the mining laws.

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore land in a reclamation withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the withdrawal. Furthermore, even if the withdrawal were revoked and the lands opened to entry, this action could not revive mining claims which were void when located while the withdrawal was in effect and the land closed to entry under the mining laws.

J. P. Hinds, et al., 25 IBLA 67 (June 1, 1976) 83 I.D. 275

A mining claim located before Aug. 11, 1955, on land within an existing powersite withdrawal is properly declared null and void as the land was then closed to mineral entry. Claims located prior to that date were not resuscitated by the Mining Claims Rights Restoration Act of 1955.

Beverly Trull, 25 IBLA 157 (June 10, 1976)

Patented lands which are subsequently acquired by the United States are not, by mere force of reacquisition, open to disposal under the public land laws. In the absence of specific statutory direction to the contrary, the acquired land is not subject to location under the mining laws.

J. C. Babcock, J. G. Shipp, 25 IBLA 316 (June 30, 1976)

Placer mining on claims located pursuant to the Mining Claims Rights Restoration Act of 1955 will be prohibited where unrestricted mining activity would substantially interfere with.

United States v. Richard and Beverly Weigel, 26 IBLA 183 (Aug. 10, 1976)

The fact that assessment work has been performed on a mining claim does not estop the Government from determining the validity of a claim by proper proceedings giving adequate notice and an opportunity for a hearing where there are disputed determinative facts. However, where the claim was located after land has been withdrawn from mining, it is proper for the Bureau of Land Management to declare a claim null and void ab initio without a hearing.

A verified statement required under sec. 5 of the Surface Resources Act of July 23, 1955,

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

30 U.S.C. § 613 (1970), is properly rejected when the mining claim in connection with which it is filed, is declared to be null and void ab initio because it was located on land withdrawn from mineral location for power purposes prior to the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 et seq. (1970), and the land was segregated for purposes other than power development at that time and continuously thereafter.

Roy R. Cummins, 26 IBLA 223 (Aug. 17, 1976)

A mining claim located before Aug. 11, 1955, on land within an existing powersite withdrawal is properly declared null and void as the land was then closed to mineral entry. Void claims located prior to that date were not given life by the Mining Claims Rights Restoration Act of 1955.

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

The rejection of an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), to open lands in a reclamation withdrawal to mineral location will be affirmed when the applicant fails to submit facts to show the basis for his knowledge or belief that the lands contain valuable mineral deposits. Merely to state the lands contain such deposits is not sufficient.

Joe Ashburn, 27 IBLA 227 (Oct. 12, 1976)

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

W. A. Todd, A. B. Johnson, 28 IBLA 180 (Dec. 1, 1976)

A mining claim is properly declared null and void ab initio to the extent it has been located, prior to the enactment of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. §§ 621-5 (1970), on lands withdrawn from mineral location by a power project classification.

Earl D. Roberts, 28 IBLA 286 (Dec. 27, 1976)

LOCATABILITY OF MINERAL

Generally

Ground feldspar, used as a soil conditioner or soil amendment, is not a locatable mineral deposit under the general mining laws in the absence of a showing that the mineral meets the test of United States v. Bunkowski, 5 IBLA 102, 113-16, 79 I.D. 43, 48-49 (1972), namely, that the mineral is found to be not just a physical amendment to the soil, but

MINING CLAIMS--Continued

LOCATABILITY OF MINERAL--Continued

Generally--Continued

rather a chemical amendment which alters and improves soil or plant chemistry.

United States v. Robert W. Beal, 23 IBLA 378 (Feb. 4, 1976)

Water is not a mineral which is locatable under the general mining law.

Robert L. Beery, et al., 25 IBLA 287 (June 28, 1976) 83 I.D. 249

A deposit of rhyolite and dacite stone, used in the manufacture of asphaltic concrete and as sealcoating on asphaltic pavement, which occurs in a naturally crushed state, which has been roughly stratified and naturally sorted by the forces of nature to an extent that is not found on any other material source in the area, which has little or no overburden, and which affords specification material at a cost significantly below that incurred for the production of any other aggregate from sources in the same market area, has special and distinct physical properties which give it distinct special economic value, and therefore it is locatable as an uncommon variety under the general mining law, and its appropriation is not barred by 30 U.S.C. § 611 (1970).

United States v. Melvin McCormick, 27 IBLA 65 (Sept. 29, 1976)

A valuable deposit of geodes, round stones with crystalline centers and composed of recognized mineral substances, which possess an economic value in trade and the ornamental arts, and which are being removed by actual mining operations, is subject to location under the mining laws. South Dakota Mining Co. v. McDonald, 30 L.D. 357 (1900), distinguished.

United States v. Glenn C. Bolinder and L. O. Turner, et al., 28 IBLA 187 (Dec. 6, 1976) 83 I.D. 609

LOCATION

The Wild and Scenic River Act withdrew from appropriation under the mining laws the minerals in federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. This withdrawal does not extend to minerals in lands near tributaries of designated rivers unless the tributaries were expressly included.

Walter B. Freeman, et al., 25 IBLA 150 (June 10, 1976)

MINING CLAIMS--Continued

LOCATION--Continued

Mining claims are properly declared null and void ab initio when the locations were not perfected by performance of the condition precedent to the opening of withdrawn land to location, entry and patent under the mining laws.

Floyd W. McCarty, 28 IBLA 246 (Dec. 20, 1976)

LODE CLAIMS

High assay samples alone are not evidence of a discovery. The nature of the samples yielding the high values must be considered. Where neither the date of the samples nor the nature of the samples submitted for assay is known, those assays cannot be considered as representative of a valuable mineral deposit within the limits of a mining claim.

United States v. Wallace W. Vaux, 24 IBLA 289 (Apr. 1, 1976)

Occasional assay samples of material from a lode mining claim containing high values of gold are not conclusive evidence of a valid discovery. Other factors must be considered, such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values. To be meaningful, the samples must be representative of the mineral deposit, not simply selective showings of the best mineralization.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

As a prerequisite for the validity of a lode mining claim, there must be found within the limits of the claim a vein or lode of the quartz, or other rock in place, bearing mineral of such quantity and quality that a prudent person would expend his time and means with a reasonable prospect of success in developing a valuable mine. Evidence which merely shows that further exploration is needed to "discover" the valuable mineral deposit does not meet the prudent man test.

United States v. The American Fluorspar Group, Inc., 25 IBLA 136 (June 7, 1976)

MILLSITES

Where a millsite is not being used for mining or milling purposes in connection with a mining claim owned by the owner of the millsite, and at the time of contest there is no quartz mill or reduction works on the site, the millsite must be declared null and void.

United States v. Aloys A. Dietemann and Doris E. L. Dietemann, 26 IBLA 356 (Sept. 8, 1976)

MINING CLAIMS--Continued

PATENT

Where on appeal from a decision sustaining the Government's challenge of a patent application it is determined that the alleged ground of invalidity was one not raised in the complaint or at the hearing, the decision rejecting the patent application will be set aside and the Government will be afforded an opportunity to amend its complaint to embrace the charge. Where the Government does amend its complaint the mineral claimant will be granted the right to an evidentiary hearing on such issue.

United States v. Robert B. McElwaine, 26 IBLA 20 (July 7, 1976)

The execution of an application for patent to a mining claim by an attorney in fact for the claimant, at a time when the claimant himself is both resident of and physically within the land district in which the mining claim is located, is unauthorized, and such an application is invalid. The defect cannot be cured by an amendment signed by the claimant.

Floyd R. Bleak, 26 IBLA 378 (Sept. 9, 1976)

POWER SITE LANDS

A mining claim located before Aug. 11, 1955, on land within an existing powersite withdrawal is properly declared null and void as the land was then closed to mineral entry. Claims located prior to that date were not resuscitated by the Mining Claims Rights Restoration Act of 1955.

Beverly Trull, 25 IBLA 157 (June 10, 1976)

Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a group of mining claims on land within a powersite classification, where unrestricted placer mining on such land would most probably result in substantial interference with the use of the land for recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or power sites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Boyd McGinn, et al., 25 IBLA 188 (June 14, 1976)

Placer mining on claims located pursuant to the Mining Claims Rights Restoration Act will be

MINING CLAIMS--Continued

POWER SITE LANDS--Continued

prohibited where unrestricted mining activity would substantially interfere with.

United States v. Richard and Beverly Weigel, 26 IBLA 183 (Aug. 10, 1976)

A mining claim located before Aug. 11, 1955, on land within an existing powersite withdrawal is properly declared null and void as the land was then closed to mineral entry. Void claims located prior to that date were not given life by the Mining Claims Rights Restoration Act of 1955.

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

RELOCATION

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio. The finding that appellants have no rights under Sept. 1974 locations does not affect any rights which may have been deeded to them by the holder of a 1952 claim located prior to the time the land was withdrawn from mineral locations.

W. R. and G. R. Strickler, 27 IBLA 267 (Oct. 26, 1976)

SPECIFIC MINERAL(S) INVOLVED

Generally

A valuable deposit of geodes, round stones with crystalline centers and composed of recognized mineral substances, which possess an economic value in trade and the ornamental arts, and which are being removed by actual mining operations, is subject to location under the mining law. South Dakota Mining Co. v. McDonald, 30 L.D. 357 (1900), distinguished.

United States v. Glenn C. Bolinder and L. O. Turner, et al., 28 IBLA 187 (Dec. 6, 1976) 83 I.D. 609

Feldspar

Ground feldspar, used as a soil conditioner or soil amendment, is not a locatable mineral deposit under the general mining laws in the absence of a showing that the mineral meets the test of United States v. Bunkowski, 5 IBLA 102, 113-16, 79 I.D. 43, 48-49 (1972), namely, that the mineral is found to be not just a physical amendment to the soil, but rather a chemical amendment which alters and improves soil or plan chemistry.

United States v. Robert W. Beal, 23 IBLA 378 (Feb. 4, 1976)

MINING CLAIMS--Continued

SPECIFIC MINERAL(S) INVOLVED--Continued

Water

Water is not a mineral which is locatable under the general mining law.

Robert L. Beery, et al., 25 IBLA 287 (June 28, 1976) 83 I.D. 249

SURFACE USES

Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a group of mining claims on land within a powersite classification, where unrestricted placer mining on such land would most probably result in substantial interference with the use of the land for recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or power sites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Boyd McGinn, et al., 25 IBLA 188 (June 14, 1976)

A verified statement required under sec. 5 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 613 (1970), is properly rejected when the mining claim in connection with which it is filed, is declared to be null and void ab initio because it was located on land withdrawn from mineral location for power purposes prior to the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 et seq. (1970), and the land was segregated for purposes other than power development at that time and continuously thereafter.

Roy R. Cummins, 26 IBLA 223 (Aug. 17, 1976)

WITHDRAWN LAND

Mining claims and millsites located upon land which has been previously withdrawn from entry under the mining laws by a first-form reclamation withdrawal are void ab initio. Because Departmental Order No. 2515 delegated authority to revoke such a withdrawal to the Bureau of Reclamation with the concurrence of the Bureau of Land Management, the land remains withdrawn from mining locations when the Bureau of Land Management does not concur with the recommendation of the Bureau of Reclamation to revoke the withdrawal and restore the land to entry.

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore land in a reclamation

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the withdrawal. Furthermore, even if the withdrawal were revoked and the lands opened to entry, this action could not revive mining claims which were void when located while the withdrawal was in effect and the land closed to entry under the mining laws.

J. P. Hinds, et al., 25 IBLA 67 (June 1, 1976) 83 I.D. 275

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. This withdrawal does not extend to minerals in lands near tributaries of designated rivers unless the tributaries were expressly included.

Walter B. Freeman, et al., 25 IBLA 150 (June 10, 1976)

A mining claim located before Aug. 11, 1955, on land within an existing powersite withdrawal is properly declared null and void as the land was then closed to mineral entry. Claims located prior to that date were not resuscitated by the Mining Claims Rights Restoration Act of 1955.

Beverly Trull, 25 IBLA 157 (June 10, 1976)

Mining claims located on land withdrawn from all forms of entry are null and void from the beginning.

Robert L. Beery, et al., 25 IBLA 287 (June 28, 1976) 83 I.D. 249

A mining claim located before Aug. 11, 1955, on land within an existing powersite withdrawal is properly declared null and void as the land was then closed to mineral entry. Void claims located prior to that date were not given life by the Mining Claims Rights Restoration Act of 1955.

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

The rejection of an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), to open lands in a reclamation withdrawal to mineral location will be affirmed when the applicant fails to submit facts to show the basis for his knowledge or belief that the lands contain valuable mineral deposits. Merely to state the lands contain such deposits is not sufficient.

Joe Ashburn, 27 IBLA 227 (Oct. 12, 1976)

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio. The finding that appellants have no rights under Sept. 1974 locations does not affect any rights which may have been deeded to them by the holder of a 1952 claim located prior to the time the land was withdrawn from mineral locations.

W. R. and G. R. Strickler, 27 IBLA 267 (Oct. 26, 1976)

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

W. A. Todd, A. B. Johnson, 28 IBLA 180 (Dec. 1, 1976)

Mining claims located when the land has been withdrawn from all public entry by a first-form reclamation withdrawal are properly declared null and void ab initio. Subsequent restoration of the land to mineral entry does not revive the invalid locations.

Mining claims are properly declared null and void ab initio when the locations were not perfected by performance of the condition precedent to the opening of withdrawn land to location, entry and patent under the mining laws.

Floyd W. McCarty, 28 IBLA 246 (Dec. 20, 1976)

MINING CLAIMS RIGHTS RESTORATION ACT

Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a group of mining claims on land within a powersite classification, where unrestricted placer mining on such land would most probably result in substantial interference with the use of the land for recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or power sites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Boyd McGinn, et al., 25 IBLA 188 (June 14, 1976)

MINING CLAIMS RIGHTS RESTORATION ACT--Continued

Placer mining on claims located pursuant to the Mining Claims Rights Restoration Act will be prohibited where unrestricted mining activity would substantially interfere with.

United States v. Richard and Beverly Weigel, 26 IBLA 183 (Aug. 10, 1976)

A verified statement required under sec. 5 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 613 (1970), is properly rejected when the mining claim in connection with which it is filed, is declared to be null and void ab initio because it was located on land withdrawn from mineral location for power purposes prior to the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 et seq. (1970), and the land was segregated for purposes other than power development at that time and continuously thereafter.

Roy R. Cummins, 26 IBLA 223 (Aug. 17, 1976)

The Department of the Interior may contest the validity of any unpatented mining claims located on public land, including claims located within powersite withdrawals; the Department's authority to contest the validity of mining claims was not diminished by the Mining Claims Rights Restoration Act of 1955.

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

MINING OCCUPANCY ACT

ACREAGE TO BE CONVEYED

Where an offer of land under the Mining Claims Occupancy Act may include land within a right-of-way being condemned for a state highway, and where such evidence was not before the Board when it considered the appeal, a petition for reconsideration may be granted.

Robert P. Starritt (On Reconsideration), 26 IBLA 205 (Aug. 16, 1976)

MISTAKES

GENERALLY

Even if it be established that a controlling regulation had been violated in previous cases, such violation does not afford a valid predicate for further violations of the regulation.

Mary Nan Spear, 25 IBLA 34 (May 5, 1976)

Even if it be established that the Department had not applied in other cases regulation 43 CFR 4115.2-1(e)(8), which requires termination of grazing privileges upon loss of ownership or control of base property, such

MISTAKES--Continued

GENERALLY--Continued

failure to apply the regulation is not authority to further disregard the regulation.

Prior recognition of grazing privileges based on licensee's erroneous statement of ownership of base property does not estop the Department from canceling the privileges when it becomes aware of the facts.

Charles Stewart, 26 IBLA 160 (Aug. 4, 1976)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

GENERALLY

On appeals from decisions to proceed with proposed timber sales, when the District Manager tentatively proposes to withdraw the tracts from sale plans in order more fully to examine appellants' allegations, and material submitted in a related appeal, the decisions will be set aside and the cases remanded for further consideration.

Alan Winter, Elizabeth Freeman, et al., 23 IBLA 343 (Jan. 21, 1976)

A decision suspending oil and gas lease applications for public land in a national forest because the Forest Service has not prepared an environmental impact statement on a roadless area will be set aside and the cases remanded for the BLM in the exercise of its delegated discretion to lease public lands for oil and gas, first to determine whether the Bureau should prepare an environmental impact statement as the lead agency responsible for mineral leasing, and then to act on the offers accordingly.

Chevron Oil Company, 24 IBLA 159 (Mar. 15, 1976)

The Board of Land Appeals may entertain and, where appropriate, grant a motion by the Bureau of Land Management to remand a case to it for further consideration on the question of whether an environmental impact statement must be filed, even though an appellant, who has protested against a negative declaration that no impact statement is required, objects to the remand.

Harold Gillis, 24 IBLA 248 (Mar. 25, 1976)

ENVIRONMENTAL STATEMENTS

The drawing of an offer for a noncompetitive lease in a simultaneous oil and gas lease drawing creates no vested rights in the offeror, and the offeror cannot compel the issuance of a lease before an environmental analysis has been made where the Bureau of Land Management has determined that the environmental analysis is necessary for the

NOTICE--Continued

GENERALLY--Continued

notice is returned to the Bureau marked "Unclaimed" by the post office, the cancellation of the lease will be set aside and the notice will not be considered to have been served on the offeror, pursuant to 43 CFR 1810.2(b), when the post office has failed to forward the notice in accordance with a request by the offeror to forward all mail and other mail has, in fact, been forwarded.

Jack R. Coombs, 28 IBLA 53 (Nov. 9, 1976)

An offeror is properly disqualified from receiving a noncompetitive oil and gas lease on an offer which is drawn first from a group of simultaneously filed offers when he fails to pay the first year's advance rental within 15 days of his receipt of notice that such rental is due, and the delay is attributable to his posting of the rental check with insufficient postage.

Edgar C. Bennington, Jr., 28 IBLA 65 (Nov. 10, 1976)

A document which is sent by the Bureau of Land Management to an oil and gas lessee by certified mail is considered to be served upon the lessee when a receptionist in lessee's office signs the return receipt card, and the lessee will be charged with notice as of that date as to the contents of such document.

Lone Star Producing Company, 28 IBLA 132 (Nov. 19, 1976)

CONSTRUCTIVE NOTICE

Where an attorney files an answer to a contest concerning mining claims on behalf of certain individuals, who, during the pendency of the contest proceedings, transfer their interests in the mining claims to a corporation of which they are major stockholders and Directors, and the attorney represents those individuals and the corporation at the contest hearing, the corporation is bound by the determination reached therein, even though the corporation may not have received actual notice of the contest.

Service of a document upon a person's attorney of record constitutes effective service upon such person.

United States v. Mine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

OIL AND GAS LEASES

GENERALLY

Where an oil and gas lease offeror files a simultaneous oil and gas lease drawing card and indicates that its corporate qualifications are filed under a specific serial number, the

OIL AND GAS LEASES--Continued

GENERALLY--Continued

offer will not be rejected where the corporation can show that the State Office informed it earlier that its corporate qualifications had been placed in that file.

Allied Chemical Corp., 23 IBLA 214 (Jan. 6, 1976)

The recommendations of the Forest Service are important in determining whether or not an oil and gas lease should issue for public lands but are not conclusive. Ultimately, the Secretary of the Interior is entrusted with the responsibility of determining whether or not to issue a lease.

Stanley M. Edwards, 24 IBLA 12 (Feb. 4, 1976) 83 I.D. 33

It is well established that the execution of appropriate special stipulations as a condition precedent to the issuance of oil and gas leases may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational, and other land use values.

While "no surface occupancy" stipulations should be of sufficient efficacy to protect the environment, no lease should issue with stipulations so restrictive that the use of the land for any purpose associated with the production of oil and gas is totally precluded.

The financial burden of complying with protective stipulations in oil and gas leases is the sole responsibility of the lessee.

Bill J. Maddox, 24 IBLA 147 (Mar. 10, 1976)

The Mineral Leasing Act of 1920 vests the Department of the Interior with the discretion to lease public lands for oil and gas, including public lands in the national forests. Although this Department gives most careful consideration to the recommendations of the Forest Service, the latter does not have a veto power over public land leasing.

Chevron Oil Company, 24 IBLA 159 (Mar. 15, 1976)

The financial burden of complying with stipulations included in an oil and gas lease is the sole responsibility of the lessee.

Duncan Miller, 24 IBLA 203 (Mar. 19, 1976)

The amount of acreage contained in an oil and gas lease may be reduced where, upon resurvey of the land, it is determined that the area under lease is actually smaller than the area shown by the original survey.

Grace M. Brown, et al., 24 IBLA 301 (Apr. 1, 1976)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Arkla Exploration Co., 25 IBLA 220 (June 21, 1976)

Where the Bureau of Land Management ordered on Mar. 26, 1975, that unofficial copies of the simultaneous oil and gas lease entry card were invalid and to be rejected, that order will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the Jan. 1975 simultaneous filing period.

Eve Reese, 25 IBLA 244 (June 22, 1976)

The dismissal of a protest, which consists of a mere allegation that the successful drawee was engaged in practices militating against the fairness of the drawing, will be sustained on appeal absent any substantiating evidence supporting the allegation.

Duncan Miller, 26 IBLA 37 (July 8, 1976)

The fact that the courtesy rental notice was delayed in reaching appellant because it was sent to appellant's former address is not a justifiable excuse for late payment.

Serio Exploration Company, 26 IBLA 106 (July 26, 1976)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. But where a State Office of the Bureau of Land Management seeks to impose a "no surface occupancy" stipulation, the most stringent of stipulations, without a showing that it has considered less stringent stipulations, the decisions will be set aside. Where the stated basis for the imposition of the stipulation is the threat of oil and gas activities to automobile racing, the decision will be set aside particularly where the lease offers include land primarily outside the boundaries of the racing grounds withdrawal.

Vern K. Jones, et al., 26 IBLA 165 (Aug. 4, 1976)

Where an oil and gas lease offer is rejected because the land was received by the United States as part of a sec. 8, Taylor Grazing Act exchange, and the record does not indicate such an exchange took place the case

OIL AND GAS LEASES--Continued

GENERALLY--Continued

will be remanded for consideration in light of the actual record.

Husky Oil Company of Delaware, 26 IBLA 194 (Aug. 11, 1976)

An oil and gas lease will expire by operation of law at the end of its primary term unless oil or gas is being produced in paying quantities at that time or actual drilling operations were commenced prior to the end of the primary term and are being diligently prosecuted, thereby entitling the lessee to an extension of the lease. A once productive well which ceases its productive capability during the initial term will not prevent expiration of the lease.

Rajac Industries, Inc., 26 IBLA 202 (Aug. 11, 1976)

Bureau of Land Management personnel have no affirmative duty to take extraordinary measures to preserve an oil and gas lease or to save the lessee from the possible consequences of his own conduct of his affairs concerning such lease.

Stanley J. Pirtle, 26 IBLA 348 (Sept. 7, 1976)

Failure to execute fully an oil and gas drawing card (by omitting the zip code) properly results in the rejection of the offer.

Even assuming that a BLM order has the force and effect of a regulation, it cannot be applied retroactively where there are intervening rights or the interests of the United States would be adversely affected. Where there is a no. 2 oil and gas drawing card, it constitutes an intervening right.

Beverly J. Steinbeck, 27 IBLA 249 (Oct. 18, 1976)

Sec. 4 of the Geothermal Steam Act of 1970 directs competitive bidding for geothermal leases on lands within a known geothermal resource area under regulations formulated by the Secretary of the Interior. Where the Department has promulgated regulations pursuant to this section which provides the Secretary's authorized officer with the reserved right to reject any and all bids submitted for a competitive geothermal lease sale, and that reserved right is publicized in the sale notice, the Government is not obligated to accept any bid which might be considered inadequate.

Getty Oil Company, 27 IBLA 269 (Oct. 26, 1976)

Failure to execute fully an oil and gas drawing entry card (by omitting the zip code) properly results in the rejection of the offer.

Amy H. Hanthorn, 27 IBLA 369 (Nov. 4, 1976)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

An oil and gas lease issued effective Oct. 1, 1966, for a term of 10 years expired at midnight on Sept. 30, 1976, unless extended by some provision of statute or regulation.

Duncan Miller, 28 IBLA 62 (Nov. 10, 1976)

A document which is sent by the Bureau of Land Management to an oil and gas lessee by certified mail is considered to be served upon the lessee when a receptionist in lessee's office signs the return receipt card, and the lessee will be charged with notice as of that date as to the contents of such document.

Lone Star Producing Company, 28 IBLA 132 (Nov. 19, 1976)

ACQUIRED LANDS LEASES

A noncompetitive oil and gas lease offer for acquired land in an incorporated city, is properly rejected since the Mineral Leasing Act for Acquired Lands specifically excludes such lands from its provisions.

Sallie B. Sanford, 23 IBLA 312 (Jan. 16, 1976)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no discretionary authority to lease such land where the consent is withheld.

Sallie B. Sanford, 24 IBLA 31 (Feb. 17, 1976)

Uncertainty of title to oil and gas in an acquired land tract is sufficient ground for the rejection of a lease offer in the exercise of the Secretary's discretionary authority over leasing. The burden is on the lease applicant to demonstrate that the minerals he seeks to lease are owned by the United States as an acquired interest. A decision rejecting an offer will be affirmed where appellant has failed to meet this burden and a significant question of title remains.

Don Jumper, 24 IBLA 218 (Mar. 24, 1976)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

fractional mineral interest not owned by the United States.

Michael Shearn, 24 IBLA 259 (Mar. 29, 1976)

Robert L. Williams, 24 IBLA 311 (Apr. 20, 1976)

Mary Nan Spear, 25 IBLA 34 (May 5, 1976)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by 43 CFR 3130.4-4 showing the extent of his ownership of operating rights for the fractional mineral interest not owned by the United States.

June Brooks, 25 IBLA 326 (June 30, 1976)

Because the Mineral Leasing Act for Acquired Lands specifically excludes the leasing of land located within an incorporated city, town, or village, a noncompetitive oil and gas lease offer for acquired land within the boundaries of such a city, town, or village is properly rejected.

James L. Santy, 25 IBLA 390 (July 6, 1976)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany her offer with the statement required by the regulation showing the extent of her ownership of operating rights to the fractional mineral interests not owned by the United States.

Beatrice E. Marchand, 26 IBLA 180 (Aug. 9, 1976)

A simultaneous acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interests not owned by the United States, nor can such defect be cured by submitting the information on appeal.

Jelenko Stefanovic, 26 IBLA 229 (Aug. 17, 1976)

Where title to the minerals in a tract of acquired land which is the subject of an oil and gas lease offer cannot be determined from records in the possession of the BLM, the burden is on the applicant to search the land records to ascertain the chain of title and establish the eligibility of the tract for

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

leasing. Applicant may be required to furnish evidence from the county recorder's office in the nature of a title abstract sufficient to allow the Solicitor to render a legal opinion regarding title to the oil and gas in the tract sought for leasing. Rejection of the offer in the exercise of the Secretary's discretion over leasing is proper where applicant declines to provide such information.

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant is not sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a United States interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Jean Oakason, 27 IBLA 41 (Sept. 22, 1976)

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, is defective and is properly rejected when the applicant fails to accompany its offer with the statement required by the regulation showing the extent of its ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror submits its statement of operating rights with its appeal, the defect may be considered cured with priority of filing as of that time.

Arkansas Western Gas Company, 27 IBLA 207 (Oct. 6, 1976)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

Frank G. Wells, 28 IBLA 113 (Nov. 15, 1976)

Susan R. Smith, 28 IBLA 173 (Nov. 24, 1976)

ACREAGE LIMITATIONS

An oil and gas lease issued for 2,960 acres in violation of administrative regulations need not be canceled in its entirety, in the absence of an intervening qualified applicant.

John T. Stewart, III, Harlan C. Altman, Jr., Trustee, 25 IBLA 306 (June 28, 1976)
83 I.D. 247

OIL AND GAS LEASES--Continued

APPLICATIONS

Generally

Where an oil and gas lease offeror files a simultaneous oil and gas lease drawing card and indicates that its corporate qualifications are filed under a specific serial number, the offer will not be rejected where the corporation can show that the State Office informed it earlier that its corporate qualifications had been placed in that file.

Allied Chemical Corp., 23 IBLA 214 (Jan. 6, 1976)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is postdated beyond the date of the drawing.

Ray Flamm, 24 IBLA 10 (Feb. 4, 1976)

The drawing of an offer for a noncompetitive lease in a simultaneous oil and gas lease drawing creates no vested rights in the offeror, and the offeror cannot compel the issuance of a lease before an environmental analysis has been made where the Bureau of Land Management has determined that the environmental analysis is necessary for the protection of the resources of the particular area.

Paula J. Jones, 24 IBLA 76 (Feb. 24, 1976)

It is well established that the execution of appropriate special stipulations as a condition precedent to the issuance of oil and gas leases may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational, and other land use values.

While "no surface occupancy" stipulations should be of sufficient efficacy to protect the environment, no lease should issue with stipulations so restrictive that the use of the land for any purpose associated with the production of oil and gas is totally precluded.

The financial burden of complying with protective stipulations in oil and gas leases is the sole responsibility of the lessee.

Bill J. Maddox, 24 IBLA 147 (Mar. 10, 1976)

A decision suspending oil and gas lease applications for public land in a national forest because the Forest Service has not prepared an environmental impact statement on a roadless area will be set aside and the cases remanded for the Bureau of Land Management, in the exercise of its delegated discretion to lease public lands for oil and gas, first to determine whether the Bureau should prepare an environmental impact statement as the lead agency responsible for mineral leasing, and then to act on the offers accordingly.

Chevron Oil Company, 24 IBLA 159 (Mar. 15, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The financial burden of complying with stipulations included in an oil and gas lease is the sole responsibility of the lessee.

Duncan Miller, 24 IBLA 203 (Mar. 19, 1976)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

Michael Shearn, 24 IBLA 259 (Mar. 29, 1976)

Robert L. Williams, 24 IBLA 311 (Apr. 20, 1976)

A decision rejecting an oil and gas lease offer because the State Office wishes to reconsider whether a lease should issue subject to a no surface occupancy stipulation will be set aside and the case remanded for the Bureau of Land Management, in the exercise of its delegated discretion to lease public lands for oil and gas, to determine whether in the light of Chevron Oil Company, 24 IBLA 159 (1976), it wishes to issue a lease subject to a no surface occupancy stipulation, or whether it still wishes to make the subject land not available for leasing at this time, which is within its authority.

Milan S. Papulak, 24 IBLA 278 (Mar. 30, 1976)

Simultaneous oil and gas lease drawing entry cards which are not executed correctly will be rejected. Where an ambiguity is created by an applicant on a drawing entry card, it is not the responsibility of BLM to speculate about applicant's intention and necessarily to resolve the ambiguity in his favor.

Joseph A. Winkler, 24 IBLA 380 (Apr. 29, 1976)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

Even if it be established that a controlling regulation had been violated in previous cases, such violation does not afford a valid predicate for further violations of the regulation.

Mary Nan Spear, 25 IBLA 34 (May 5, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act.

The execution of special stipulations as a condition precedent to the issuance of an oil and gas lease may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational and other land use values. In each case the need for the stipulation should be clear and the means to accomplish the intended purpose should be reasonable.

While the Bureau of Land Management may reject oil and gas lease offers or require stringent protective stipulations in order to protect the environment, such action must be supported by facts of record. Where such action is taken and is supported only by statements that leasing would not be in the public interest, the case will be remanded to the Bureau for a more complete exposition of the basis for the action.

Cartridge Syndicate, 25 IBLA 57 (May 20, 1976)

Simultaneous oil and gas drawing entry cards must be fully executed by the applicant and when the applicant omits the date of execution on the card, the lease offer is properly rejected.

Where an applicant fails to date a simultaneous oil and gas drawing entry card, he has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and his offer is properly rejected whether the defect is discovered before or after the drawing. The fact that BLM entered the card in the drawing does not waive the defect.

John R. Mimick, et al., 25 IBLA 107 (June 7, 1976)

A simultaneous oil and gas lease offer is properly rejected and the filing fee retained where the offeror, in completing the drawing card, does not provide the name of the state in which the parcel of land is located.

Ray Granat, et al., 25 IBLA 115 (June 7, 1976)

Where the Bureau of Land Management ordered on Mar. 26, 1975, that unofficial copies of the simultaneous oil and gas lease entry card were invalid and to be rejected, that order will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the Jan. 1975 simultaneous filing period.

Eve Reese, 25 IBLA 244 (June 22, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure must be rejected when the entry card contains the name of an additional party in interest and the required statement of the additional party's interest and qualifications is not filed within the time required by 43 CFR 3102.7. The filing of the required statement after that time has elapsed does not cure the defect.

John J. Gergurich, Darrell G. Seal, Thomas J. Sweeney, 25 IBLA 266 (June 24, 1976)

The bona fide purchaser provision of the Act of Sept. 21, 1959, 73 Stat. 571, as amended, 30 U.S.C § 184(h)(2) (1970), does not protect the assignee of a noncompetitive oil and gas lease offeror from the rejection of its assignor's offer after it is drawn first at a simultaneous drawing.

Leon M. Flanagan, et al., 25 IBLA 269 (June 24, 1976)

An oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure must be rejected when the entry card contains the name of an additional party in interest and the required statement of the additional party's interest and qualifications is not filed within the time required by 43 CFR 3102.7. The offeror is not retroactively excused from submitting the required statement by an assertion in his appeal that he is the sole party in interest because the anticipated association between him and the additional party listed on the entry card had failed to materialize.

James D. Caddell, 25 IBLA 274 (June 24, 1976)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by 43 CFR 3130.4-4 showing the extent of his ownership of operating rights for the fractional mineral interest not owned by the United States.

June Brooks, 25 IBLA 326 (June 30, 1976)

Simultaneous oil and gas entry cards which are sent to the wrong State Office are not considered filed in the "proper office" within the meaning of 43 CFR 1821.2-2(f), and such State Office has no jurisdiction over entry cards pursuant to 43 CFR 1821.2-1(c); therefore, the filing fees for such offers should not be retained.

Where a simultaneous oil and gas entry card is filed in the wrong State Office, the entry

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

card and the filing fee should be returned to the offeror.

James H. Scott, 25 IBLA 384 (July 6, 1976)

Because the Mineral Leasing Act for Acquired Lands specifically excludes the leasing of land located within an incorporated city, town, or village, a noncompetitive oil and gas lease offer for acquired land within the boundaries of such a city, town, or village is properly rejected.

James L. Santy, 25 IBLA 390 (July 6, 1976)

A simultaneous oil and gas lease offer is properly rejected where the drawing card is not signed.

A simultaneous oil and gas lease offer is properly rejected when the date is omitted from the drawing card.

Herbert W. Schollmeyer, 25 IBLA 393 (July 6, 1976)

A simultaneous oil and gas lease offer is properly rejected and the filing fee retained where the offeror, in completing the drawing card, does not provide the name of the state in which the parcel of land is located where called for on the card.

When the Secretary of the Interior determines that an oil and gas lease is to be issued for a particular tract, it must be issued to the first qualified applicant. An applicant is not qualified because of his failure to comply with 43 CFR 3112.2-1(a) when he fails to provide the name of the state in which the parcel of land is located.

Ishmael Guerra, 26 IBLA 116 (July 26, 1976)

A simultaneous oil and gas lease offer is properly rejected and the filing fee retained where the offeror, in completing the drawing card, does not provide the name of the state in which the parcel of land is located.

Jerry Van Waardhuizen, 26 IBLA 152 (Aug. 2, 1976)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. But where a State Office of the Bureau of Land Management seeks to impose a "no surface occupancy" stipulation, the most stringent of stipulations, without a showing that it has considered less stringent stipulations, the decisions will be set aside. Where the stated

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

basis for the imposition of the stipulation is the threat of oil and gas activities to automobile racing, the decision will be set aside particularly where the lease offers include land primarily outside the boundaries of the racing grounds withdrawal.

Vern K. Jones, et al., 26 IBLA 165 (Aug. 4, 1976)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany her offer with the statement required by the regulation showing the extent of her ownership of operating rights to the fractional mineral interests not owned by the United States.

Beatrice E. Marchand, 26 IBLA 180 (Aug. 9, 1976)

A simultaneous acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interests not owned by the United States, nor can such defect be cured by submitting the information on appeal.

Jelenko Stefanovic, 26 IBLA 229 (Aug. 17, 1976)

A simultaneous oil and gas drawing entry card must be fully executed by an applicant, and when the applicant omits her address, the lease offer is properly rejected and the filing fee properly retained.

Grace M. Williams, 26 IBLA 232 (Aug. 17, 1976)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest, and the required statement of interest, copy of explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within 15 days after the filing of the lease offer, the offer must be rejected.

Charmay B. Allred, Edward C. Allred, 26 IBLA 276 (Aug. 24, 1976)

Lands within a known geologic structure of a producing oil or gas field may only be leased by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected.

James A. Wallender, 26 IBLA 317 (Aug. 30, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Land included within an outstanding oil and gas lease is not available for leasing and an oil and gas lease offer filed for such land must be rejected.

The Secretary has discretionary authority to reject an oil and gas lease offer where federal title to the oil and gas deposits is uncertain.

Leonard R. McSweyn, David A. Provinse, 26 IBLA 376 (Sept. 9, 1976)

An oil and gas lease offer for land in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

Grady Argenbright, 27 IBLA 24 (Sept. 17, 1976)

An oil and gas lease offer on a drawing card filed in a simultaneous drawing procedure is properly rejected as defective where there are other parties in interest in addition to the applicant but the card does not list them or refer to an attachment, and an attachment dated nearly 6 months prior to the filing, signed by the applicant and four others stating their qualifications and setting forth a percentage of interest for each as "Partners in interest," fails adequately to set forth the nature of their agreement, and no other statement or information is filed within the time required by 43 CFR 3102.7.

Harry Reich, 27 IBLA 123 (Sept. 30, 1976)
83 I.D. 507

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, is defective and is properly rejected when the applicant fails to accompany its offer with the statement required by the regulation showing the extent of its ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror submits its statement of operating rights with its appeal, the defect may be considered cured with priority of filing as of that time.

Arkansas Western Gas Company, 27 IBLA 207 (Oct. 6, 1976)

An oil and gas lease offer filed on behalf of a corporation may incorporate evidence of qualifications by reference to the serial number of a case record in which such evidence has already been filed with the Bureau of Land Management (BLM). However, reference to a file which contains no evidence of the

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

authority of the officer signing the lease offer to execute such instruments on behalf of the corporation is not sufficient and requires rejection of the offer. The fact that the required evidence is on file in another state office of the BLM under another serial number will not avail applicant where the lease offer contains no reference to that file.

Churchill Corporation, 27 IBLA 234 (Oct. 12, 1976)

The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) does not interdict the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

Under 30 U.S.C. § 226 (1970), the Department has no authority to issue an oil and gas lease to anyone other than the first qualified applicant. If an agent signs an offer for an applicant, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been filed. Where a rubber stamp constitutes an applicant's signature, a State Office of the Bureau of Land Management need not presume that an applicant rather than an agent stamped the card, and where no agent's statement has been submitted, the State Office may take appropriate action to establish that the applicant's signature was imprinted at his request and that he formulated the offer.

Robert C. Leary, et al., 27 IBLA 296 (Oct. 26, 1976)

An unsigned and undated drawing entry card filed in the simultaneous oil and gas leasing procedures must be rejected.

Frank De Jong, 27 IBLA 313 (Oct. 29, 1976)

A simultaneous oil and gas drawing entry card must be fully executed by the applicants and when they omit their address or the state in which the parcel of land to be leased is located, the lease offer is properly rejected.

Hartley L. Gordon and James A. Lint, 27 IBLA 315 (Oct. 29, 1976)

The signature of the offeror on a simultaneous oil and gas lease entry card may be affixed by means of a rubber stamp, if it is the intention of the offeror that it be his or her signature.

Evelyn Chambers, 27 IBLA 317 (Nov. 4, 1976)
83 I.D. 533

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) does not interdict the use of a rubber stamp or other mechanical device to affix a signature to a drawing entry card, provided that it is the applicant's intention that the facsimile be his signature.

Where a facsimile affixed by means of a rubber stamp or other mechanical device constitutes an applicant's signature on a drawing entry card lease offer, a State Office of the Bureau of Land Management need not presume that the applicant, rather than an agent, stamped the card. It is proper for the BLM office to make inquiry into the filing to establish that the applicant's signature was affixed at his request and that he formulated the offer. If it is disclosed that the signature was affixed pursuant to a power of attorney, and the offer was not accompanied by the statements required by 43 CFR 3102.6-1, the offer must be rejected.

Under 30 U.S.C. § 226 (1970), the Department has no authority to issue a noncompetitive oil and gas lease to anyone other than the first qualified applicant. If a drawing entry card lease offer is signed by an agent or attorney-in-fact in behalf of the applicant, or if a facsimile signature of the applicant is affixed upon the offer by an agent or attorney-in-fact, the offer cannot be considered to have been submitted by a qualified applicant unless it is accompanied by the statements required by 43 CFR 3102.6-1.

William J. Sparks, 27 IBLA 330 (Nov. 4, 1976)
83 I.D. 538

A drawing entry card oil and gas lease offer given first priority in a drawing in the simultaneous filing procedure creates no vested right to a lease in the offeror, but merely the right of having her offer considered first for the parcel described. If the drawing entry card is defective, it must be rejected.

Amy H. Hanthorn, 27 IBLA 369 (Nov. 4, 1976)

A simultaneous oil and gas drawing entry card must be fully executed by the applicant. When the applicant omits the zip code from his address on the card, the lease offer is properly rejected.

An applicant whose simultaneous oil and gas entry card is rejected because of a defect in his completion of the entry card cannot thereafter cure the defect by submitting a corrected entry card.

Raymond F. Kaiser, 27 IBLA 373 (Nov. 4, 1976)

The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) does not interdict the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Under 30 U.S.C. § 226 (1970), the Department has no authority to issue an oil and gas lease to anyone other than the first qualified applicant. If an agent signs an offer for an applicant, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been filed. Where a rubber stamp constitutes an applicant's signature, a State Office of the Bureau of Land Management need not presume that an applicant rather than an agent stamped the card, and where no agent's statement has been submitted, the State Office may take appropriate action to establish that the applicant's signature was imprinted at his request and that he formulated the offer.

Arthur S. Watkins, Robert M. Eckerman, 28 IBLA 79 (Nov. 12, 1976)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

An oil and gas lease offer for lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. If an agent signs such statement, rather than the offeror, the regulations require that evidence be filed of the authority of the agent to sign the statement. The agent's signature will be acceptable only if the authorization meets the specifications of the regulations.

Frank G. Wells, 28 IBLA 113 (Nov. 15, 1976)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

Susan R. Smith, 28 IBLA 173 (Nov. 24, 1976)

The mere filing of a noncompetitive oil and gas lease offer does not invest the offeror with any right to receive a lease, except that if the Secretary determines to lease the land applied for the applicant has a preference right to a lease if he is the first fully qualified applicant.

Pinnacle Mining and Exploration Company, Inc., 28 IBLA 249 (Dec. 20, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Ordinarily, the signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is equivalent to issuance of the lease and creates a binding contract. However, where a Secretarial Order provides that all oil and gas noncompetitive offers must, prior to issuance of a lease, be referred to Geological Survey for a determination of whether the lands are within a known geological structure, and the authorized officer fails to follow such procedure prior to the signing, such signing is not authorized and, therefore, not binding on the Secretary.

Nola Grace Ptasynski (Supp.) (On Court Remand), 28 IBLA 256 (Dec. 20, 1976)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is not signed or dated.

John Willard Dixon, 28 IBLA 275 (Dec. 20, 1976)

Where the record does not disclose sufficient facts upon which to make determinations whether a Bureau of Land Management officer who signed an oil and gas lease possessed the authority to do so, when the date of ascertainment of a known geologic structure actually occurred, and whether the United States Geological Survey had sufficient information to make a known geologic structure determination, a hearing may be ordered so that a complete record may be developed.

William T. Alexander (On Remand), 28 IBLA 277 (Dec. 22, 1976)

Amendments

An oil and gas lease offer filed under the simultaneous filing procedures, 43 CFR Subpart 3112, which is defective for failure to comply with a mandatory regulation may not be cured by subsequent filing of supplemental information after the drawing is held.

Grady Argenbright, 27 IBLA 24 (Sept. 17, 1976)

Attorneys-in-Fact or Agents

Under 30 U.S.C. § 226 (1970), the Department has no authority to issue an oil and gas lease to anyone other than the first qualified applicant. If an agent signs an offer for an applicant, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been filed. Where a rubber stamp constitutes an applicant's signature, a State Office of the Bureau of Land Management need not presume that an applicant rather than an agent stamped the card, and where no agent's statement has been submitted, the State Office may take appropriate action

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

to establish that the applicant's signature was imprinted at his request and that he formulated the offer.

Robert C. Leary, et al., 27 IBLA 296 (Oct. 26, 1976)

Arthur S. Watkins, Robert M. Eckerman, 28 IBLA 79 (Nov. 12, 1976)

Where a rubber stamp constitutes an offeror's signature on a simultaneous oil and gas lease entry card, the Bureau of Land Management need not presume that the offeror rather than an agent stamped the card, and where no agent's statement has been submitted, BLM may take appropriate action to establish the circumstances under which the signature was stamped on the card.

"Agent." The word "agent," as used in 43 CFR 3102.6-1 requiring statements of authority and disclosure of interests in oil and gas lease offers by agents, does not include an employee who has no discretionary authority and merely acts as the employer's amanuensis in affixing the employer's stamp on a simultaneous oil and gas lease offer entry card, even if it is done outside the actual physical presence of the employer. Any statement required by the Bureau of Land Management to establish the identity of the person who stamped the offeror's name on the card must allow the offeror to provide information to establish whether or not the person was an agent within the meaning of 43 CFR 3102.6-1; merely requiring the offeror to show the stamp was affixed by him or in his presence is not sufficient.

Evelyn Chambers, 27 IBLA 317 (Nov. 4, 1976) 83 I.D. 533

Where a facsimile affixed by means of a rubber stamp or other mechanical device constitutes an applicant's signature on a drawing entry card lease offer, a State Office of the Bureau of Land Management need not presume that the applicant, rather than an agent, stamped the card. It is proper for the BLM office to make inquiry into the filing to establish that the applicant's signature was affixed at his request and that he formulated the offer. If it is disclosed that the signature was affixed pursuant to a power of attorney, and the offer was not accompanied by the statements required by 43 CFR 3102.6-1, the offer must be rejected.

Under 30 U.S.C. § 226 (1970), the Department has no authority to issue a noncompetitive oil and gas lease to anyone other than the first qualified applicant. If a drawing entry card lease offer is signed by an agent or attorney-in-fact in behalf of the applicant, or if a facsimile signature of the applicant is affixed upon the offer by an agent or attorney-in-fact, the offer cannot be considered to have been submitted by a qualified applicant

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

unless it is accompanied by the statements required by 43 CFR 3102.6-1.

William J. Sparks, 27 IBLA 330 (Nov. 4, 1976) 83 I.D. 538

An oil and gas lease offer for lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. If an agent signs such statement, rather than the offeror, the regulations require that evidence be filed of the authority of the agent to sign the statement. The agent's signature will be acceptable only if the authorization meets the specifications of the regulations.

Frank G. Wells, 28 IBLA 113 (Nov. 15, 1976)

Description

An oil and gas lease offer embracing a tract of land which appears on the official survey plat as a meandered lake which is unsurveyed must give a metes and bounds description of the meandered tract tied to an official corner of the public land surveys. In the absence of such a description, the offer must be rejected.

Marilyn K. Crandall, 25 IBLA 180 (June 14, 1976)

Drawings

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is postdated beyond the date of the drawing.

Ray Flamm, 24 IBLA 10 (Feb. 4, 1976)

The drawing of an offer for a noncompetitive lease in a simultaneous oil and gas lease drawing creates no vested rights in the offeror, and the offeror cannot compel the issuance of a lease before an environmental analysis has been made where the Bureau of Land Management has determined that the environmental analysis is necessary for the protection of the resources of the particular area.

Paula J. Jones, 24 IBLA 76 (Feb. 24, 1976)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

of receipt of the notice that such payment is due.

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted delay in the Postal Service.

John Paul Pratt, 24 IBLA 110 (Mar. 1, 1976)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due. An attempt to make payment after the close of office hours on the day the payment is due will not prevent the disqualification.

W. Duane Kennedy, 24 IBLA 152 (Mar. 10, 1976)

Simultaneous oil and gas lease drawing entry cards which are not executed correctly will be rejected. Where an ambiguity is created by an applicant on a drawing entry card, it is not the responsibility of BLM to speculate about applicant's intention and necessarily to resolve the ambiguity in his favor.

Joseph A. Winkler, 24 IBLA 380 (Apr. 29, 1976)

Simultaneous oil and gas drawing entry cards must be fully executed by the applicant and when the applicant omits the date of execution on the card, the lease offer is properly rejected.

Where an applicant fails to date a simultaneous oil and gas drawing entry card, he has not complied with 43 CFR 3112.2-1(a) which requires that the card be "fully executed" and his offer is properly rejected whether the defect is discovered before or after the drawing. The fact that BLM entered the card in the drawing does not waive the defect.

John R. Mimick, et al., 25 IBLA 107 (June 7, 1976)

A simultaneous oil and gas lease offer is properly rejected and the filing fee retained where the offeror, in completing the drawing card, does not provide the name of the state in which the parcel of land is located.

Ray Granat, et al., 25 IBLA 115 (June 7, 1976)

Jerry Van Waardhuizen, 26 IBLA 152 (Aug. 2, 1976)

When the Bureau of Land Management discovers that an entry card was erroneously omitted

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

from a simultaneous drawing for an oil and gas lease, the drawing is void and a new drawing, with all cards included, must be held.

Marshall & Winston, Inc., 25 IBLA 169 (June 14, 1976)

A simultaneous oil and gas lease offer is properly rejected when the offeror fails to execute fully the drawing entry card by not identifying on the card the state in which the parcel of land is located.

Rexmull F. Manyeto and Doris O. Manyeto, 25 IBLA 218 (June 16, 1976)

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured by the submission of further information.

James D. Caddell, 25 IBLA 274 (June 24, 1976)

A simultaneous oil and gas lease offer is properly rejected where the drawing card is not signed.

A simultaneous oil and gas lease offer is properly rejected when the date is omitted from the drawing card.

Herbert W. Schollmeyer, 25 IBLA 393 (July 6, 1976)

The dismissal of a protest, which consists of a mere allegation that the successful drawee was engaged in practices militating against the fairness of the drawing, will be sustained on appeal absent any substantiating evidence supporting the allegation.

Duncan Miller, 26 IBLA 37 (July 8, 1976)

A simultaneous oil and gas lease offer is properly rejected and the filing fee retained where the offeror, in completing the drawing card, does not provide the name of the state in which the parcel of land is located where called for on the card.

When the Secretary of the Interior determines that an oil and gas lease is to be issued for a particular tract, it must be issued to the first qualified applicant. An applicant is not qualified because of his failure to comply with 43 CFR 3112.2-1(a) when he fails to provide the name of the state in which the parcel of land is located.

Ishmael Guerra, 26 IBLA 116 (July 26, 1976)

A simultaneous oil and gas drawing entry card must be fully executed by an applicant, and

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

when the applicant omits her address, the lease offer is properly rejected and the filing fee properly retained.

Grace M. Williams, 26 IBLA 232 (Aug. 17, 1976)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest, and the required statement of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within 15 days after the filing of the lease offer, the offer must be rejected.

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured by the submission of further information.

Charmay B. Allred, Edward C. Allred, 26 IBLA 276 (Aug. 24, 1976)

When an oil and gas lease offeror whose entry card was drawn first in a simultaneous drawing fails to pay the rental within 15 days after receiving notice that payment is due, he is automatically disqualified under 43 CFR 3112.4-1 from receiving the lease.

Frank De Jong, 26 IBLA 327 (Aug. 30, 1976)

A simultaneous oil and gas entry card must be signed and fully executed by the applicant. A decision rejecting such an offer will be upheld where failure to complete the date on the card renders the applicant's certification as to qualifications ineffective and causes the entry card to be incomplete.

Helen E. Ferris, 26 IBLA 382 (Sept. 9, 1976)

An oil and gas lease offer filed under the simultaneous filing procedures, 43 CFR Subpart 3112, which is defective for failure to comply with a mandatory regulation may not be cured by subsequent filing of supplemental information after the drawing is held.

Grady Argenbright, 27 IBLA 24 (Sept. 17, 1976)

Where it does not appear that the notice required by sec. 7(b) of the Privacy Act of 1974 regarding the disclosure of a social security number was given, an oil and gas lease offer on a drawing card filed in a simultaneous drawing procedure should not be considered defective solely because the applicant omitted designating the social security number on the card as provided thereon.

An oil and gas lease offer on a drawing card filed in a simultaneous drawing procedure is

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

properly rejected as defective where there are other parties in interest in addition to the applicant but the card does not list them or refer to an attachment, and an attachment dated nearly 6 months prior to the filing, signed by the applicant and four others stating their qualifications and setting forth a percentage of interest for each as "Partners in interest," fails adequately to set forth the nature of their agreement, and no other statement or information is filed within the time required by 43 CFR 3102.7.

Harry Reich, 27 IBLA 123 (Sept. 30, 1976)
83 I.D. 507

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing of simultaneous oil and gas lease offers and the vice president and secretary of the corporation also filed applications for the same parcel of land in the same drawing, as individuals, the offer of the corporation must be rejected because the officers of the corporation stand in a fiduciary relationship to the corporation and thereby increase its chances to be the successful applicant.

Panra Corporation, 27 IBLA 220 (Oct. 7, 1976)

An oil and gas lease offer filed by a corporation under the simultaneous filing procedures, 43 CFR Subpart 3112, which is defective for failure to provide evidence of corporate qualifications may not be cured by subsequent filing of supplemental evidence after the drawing is held and must be rejected.

Churchill Corporation, 27 IBLA 234 (Oct. 12, 1976)

A simultaneous oil and gas lease offer is properly rejected when the applicant has not fully executed the drawing entry card by failing to identify on the card the state in which the parcel of land is located.

James W. O'Connor, 27 IBLA 247 (Oct. 18, 1976)

Failure to execute fully an oil and gas drawing card (by omitting the zip code) properly results in the rejection of the offer.

Even assuming that a BLM order has the force and effect of a regulation, it cannot be applied retroactively where there are intervening rights or the interests of the United States would be adversely affected. Where there is a no. 2 oil and gas drawing card, it constitutes an intervening right.

Beverly J. Steinbeck, 27 IBLA 249 (Oct. 18, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) does not interdict the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

Under 30 U.S.C. § 226 (1970), the Department has no authority to issue an oil and gas lease to anyone other than the first qualified applicant. If an agent signs an offer for an applicant, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been filed. Where a rubber stamp constitutes an applicant's signature, a State Office of the Bureau of Land Management need not presume that an applicant rather than an agent stamped the card, and where no agent's statement has been submitted, the State Office may take appropriate action to establish that the applicant's signature was imprinted at his request and that he formulated the offer.

Robert C. Leary, et al., 27 IBLA 296 (Oct. 26, 1976)

A simultaneous oil and gas lease offer is properly rejected when the offeror fails to execute fully the drawing entry card by not identifying on the card the state in which the parcel of land is located.

Richard Lovatt, 27 IBLA 306 (Oct. 27, 1976)

Gerald G. Calhoun, 27 IBLA 362 (Nov. 4, 1976)

Denna R. Van De Walker, 28 IBLA 60 (Nov. 9, 1976)

An unsigned and undated drawing entry card filed in the simultaneous oil and gas leasing procedures must be rejected.

Frank De Jong, 27 IBLA 313 (Oct. 29, 1976)

A simultaneous oil and gas drawing entry card must be fully executed by the applicants and when they omit their address or the state in which the parcel of land to be leased is located, the lease offer is properly rejected.

Hartley L. Gordon and James A. Lint, 27 IBLA 315 (Oct. 29, 1976)

Where a rubber stamp constitutes an offeror's signature on a simultaneous oil and gas lease entry card, the Bureau of Land Management need not presume that the offeror rather than an agent stamped the card, and where no agent's statement has been submitted, BLM may take appropriate action to establish the circumstances under which the signature was stamped on the card.

"Agent." The word "agent," as used in 43 CFR 3102.6-1 requiring statements of authority and

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

disclosure of interests in oil and gas lease offers by agents, does not include an employee who has no discretionary authority and merely acts as the employer's amanuensis in affixing the employer's stamp on a simultaneous oil and gas lease offer entry card, even if it is done outside the actual physical presence of the employer. Any statement required by the Bureau of Land Management to establish the identity of the person who stamped the offeror's name on the card must allow the offeror to provide information to establish whether or not the person was an agent within the meaning of 43 CFR 3102.6-1; merely requiring the offeror to show the stamp was affixed by him or in his presence is not sufficient.

Evelyn Chambers, 27 IBLA 317 (Nov. 4, 1976) 83 I.D. 533

The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) does not interdict the use of a rubber stamp or other mechanical device to affix a signature to a drawing entry card, provided that it is the applicant's intention that the facsimile be his signature.

Under 30 U.S.C. § 226 (1970), the Department has no authority to issue a noncompetitive oil and gas lease to anyone other than the first qualified applicant. If a drawing entry card lease in behalf of the applicant, or if a facsimile signature of the applicant is affixed upon the offer by an agent or attorney-in-fact, the offer cannot be considered to have been submitted by a qualified applicant unless it is accompanied by the statements required by 43 CFR 3102.6-1.

William J. Sparks, 27 IBLA 330 (Nov. 4, 1976) 83 I.D. 538

Failure to execute fully an oil and gas drawing entry card (by omitting the zip code) properly results in the rejection of the offer.

A drawing entry card oil and gas lease offer given first priority in a drawing in the simultaneous filing procedure creates no vested right to a lease in the offeror, but merely the right of having her offer considered first for the parcel described. If the drawing entry card is defective, it must be rejected.

Amy H. Hanthorn, 27 IBLA 369 (Nov. 4, 1976)

A simultaneous oil and gas drawing entry card must be fully executed by the applicant. When the applicant omits the zip code from his address on the card, the lease offer is properly rejected.

An applicant whose simultaneous oil and gas entry card is rejected because of a defect in his completion of the entry card cannot thereafter cure the defect by submitting a corrected entry card.

Raymond F. Kaiser, 27 IBLA 373 (Nov. 4, 1976)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An offeror is properly disqualified from receiving a noncompetitive oil and gas lease on an offer which is drawn first from a group of simultaneously filed offers when he fails to pay the first year's advance rental within 15 days of his receipt of notice that such rental is due, and the delay is attributable to his posting of the rental check with insufficient postage.

Edgar C. Bennington, Jr., 28 IBLA 65 (Nov. 10, 1976)

A simultaneous oil and gas lease offer is properly rejected where the offeror, in preparing the drawing entry card, did not complete the date in the space provided for it on the card.

Robert J. Burkhill, 28 IBLA 76 (Nov. 12, 1976)

The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) does not interdict the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

Under 30 U.S.C. § 226 (1970), the Department has no authority to issue an oil and gas lease to anyone other than the first qualified applicant. If an agent signs an offer for an applicant, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been filed. Where a rubber stamp constitutes an applicant's signature, a State Office of the Bureau of Land Management need not presume that an applicant rather than an agent stamped the card, and where no agent's statement has been submitted, the State Office may take appropriate action to establish that the applicant's signature was imprinted at his request and that he formulated the offer.

Arthur S. Watkins, Robert M. Eckerman, 28 IBLA 79 (Nov. 12, 1976)

An oil and gas lease offer for lands in which the United States owns a fractional mineral interest which is not accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States is defective and such defect cannot be cured by the submission of further information.

Frank G. Wells, 28 IBLA 113 (Nov. 15, 1976)

Where it does not appear that the notice required by section 7(b) of the Privacy Act of 1974 regarding the disclosure of a social security number was given, an oil and gas lease offer on a drawing card filed in a simultaneous drawing procedure should not be considered defective solely because the applicant

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

omitted designating the social security number on the card as provided thereon.

Richard Lovatt, 28 IBLA 244 (Dec. 10, 1976)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is not signed or dated.

John Willard Dixon, 28 IBLA 275 (Dec. 20, 1976)

The prohibition in 43 CFR 3112.2-1(a)(2) against the filing by a simultaneous drawing oil and gas lease applicant of more than one entry card for the same parcel is only concerned with entry cards filed by the same applicant which indicate the same parcel number as shown on the posted notice. Such entry cards must be rejected regardless whether the card is fully executed or correct in all respects.

Kathleen Griffith, 28 IBLA 295 (Dec. 29, 1976)

Filing

Where an oil and gas lease offeror files a simultaneous oil and gas lease drawing card and indicates that its corporate qualifications are filed under a specific serial number, the offer will not be rejected where the corporation can show that the State Office informed it earlier that its corporate qualifications had been placed in that file.

Allied Chemical Corp., 23 IBLA 214 (Jan. 6, 1976)

The listing of lands for the simultaneous filing of oil and gas lease offers does not constitute a determination by the Department of the Interior that conditions prevail in every instance which assure the availability of those lands for further leasing. The publication of the list merely serves as notice that offers to lease the lands listed will be received. The filing of an offer for a listed tract creates no contractual relationship between the offeror and the United States.

Milan S. Papulak, 24 IBLA 278 (Mar. 30, 1976)

Simultaneous oil and gas entry cards which are sent to the wrong State Office are not considered filed in the "proper office" within the meaning of 43 CFR 1821.2-2(f), and such State Office has no jurisdiction over entry cards pursuant to 43 CFR 1821.2-1(c); therefore, the filing fees for such offers should not be retained.

Where a simultaneous oil and gas entry card is filed in the wrong State Office, the entry

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

card and the filing fee should be returned to the offeror.

James H. Scott, 25 IBLA 384 (July 6, 1976)

Where a person acting as trustee for two discrete trusts for two different minors files an oil and gas simultaneous filing entry card for the same parcel for each of the trusts, in the absence of any agreement, scheme, or plan which would confer on the trustee or settler a benefit from the lease, such filing is not violative of the regulation, 43 CFR 3112.5-2, prohibiting multiple filings.

It is proper to require a trustee of a trust, who is filing oil and gas offers therefor, to file any information relevant to determining whether the offeror is a qualified offeror, including without limitation, data bearing upon multiple filings in a simultaneous procedure. However, it is impermissible for the Bureau of Land Management to require the trustee to furnish other information not germane to those inquiries. The cancellation of a lease for failure to furnish data, some of which was not properly required, will be set aside on appeal and the trustee afforded another opportunity to furnish such data as was properly required.

Margo Panos (Trust), Gus G. Panos (Trustee), 28 IBLA 1 (Nov. 5, 1976)

640-Acre Limitation

The Department of the Interior will not reject an oil and gas lease offer for public domain lands solely for the reason of the offer being for less than 640 acres where the amount by which the offer is under 640 acres is less than the amount by which the offer would exceed 640 acres by including the smallest adjoining subdivision available for leasing.

J. W. Bloom, 24 IBLA 276 (Mar. 30, 1976)

Sole Party in Interest

An oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure must be rejected when the entry card contains the name of an additional party in interest and the required statement of the additional party's interest and qualifications is not filed within the time required by 43 CFR 3102.7. The filing of the required statement after that time has elapsed does not cure the defect.

John J. Gergurich, Darrell G. Seal, Thomas J. Sweeney, 25 IBLA 266 (June 24, 1976)

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

if it contains the names of additional parties in interest, and there is a failure to file, within the time required by 43 CFR 3102.7, the statement of their interests, the agreement between the parties, and the evidence of their qualifications.

Leon M. Flanagan, et al., 25 IBLA 269 (June 24, 1976)

An oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure must be rejected when the entry card contains the name of an additional party in interest and the required statement of the additional party's interest and qualifications is not filed within the time required by 43 CFR 3102.7. The offeror is not retroactively excused from submitting the required statement by an assertion in his appeal that he is the sole party in interest because the anticipated association between him and the additional party listed on the entry card had failed to materialize.

James D. Caddell, 25 IBLA 274 (June 24, 1976)

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest, and there is a failure to file the statement of their interests, the agreement between the parties, and the evidence of their qualifications within the time required by 43 CFR 3102.7.

Lyle W. Todd and Eileen S. Todd, 26 IBLA 246 (Aug. 18, 1976)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest, and the required statement of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within 15 days after the filing of the lease offer, the offer must be rejected.

Charmay B. Allred, Edward C. Allred, 26 IBLA 276 (Aug. 24, 1976)

An oil and gas lease offer on a drawing card filed in a simultaneous drawing procedure is properly rejected as defective where there are other parties in interest in addition to the applicant but the card does not list them or refer to an attachment, and an attachment dated nearly 6 months prior to the filing, signed by the applicant and four others stating their qualifications and setting forth a percentage of interest for each as "Partners in interest," fails adequately to set forth the nature of their agreement, and no other

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

statement or information is filed within the time required by 43 CFR 3102.7.

Harry Reich, 27 IBLA 123 (Sept. 30, 1976) 83 I.D. 507

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest and, within 15 days of the filing, the parties fail to submit a statement of their separate interests, any agreements between them and evidence of the qualifications of each offeror to hold the oil and gas lease.

Walter H. Anderson, Vern T. Jocelyn, 27 IBLA 253 (Oct. 20, 1976)

ASSIGNMENTS OR TRANSFERS

Denial of a request for approval of an assignment of an interest in an oil and gas lease is proper where (1) the lease had terminated by operation of law pursuant to 30 U.S.C. § 188(b) (1970) for failure to make timely payment of rental, and where (2) the assignor is a stranger to the lease, and the record is devoid of any assignment from the lessees of record to the assignor.

Albert Digiulio, Jr., Genuino J. Grande and Jeremy V. Cohen, 26 IBLA 169 (Aug. 4, 1976)

Where approval of an assignment of interest in an oil and gas lease has been refused by the Bureau of Land Management until such time as the assignor supplies proof from the United States Geological Survey of proper plugging and surface rehabilitation, or the assignee submits a bond relating thereto, and subsequent to the appeal, the Geological Survey provides the Bureau of Land Management with notification of approval of surface restoration, the decision refusing approval will be vacated and the case file will be remanded for further consideration of the assignments.

Clinton St. Clair, 28 IBLA 98 (Nov. 15, 1976)

BONA FIDE PURCHASER

The bona fide purchaser provision of the Act of Sept. 21, 1959, 73 Stat. 571, as amended, 30 U.S.C. § 184(h)(2) (1970), does not protect the assignee of a noncompetitive oil and gas lease offeror from the rejection of its assignor's offer after it is drawn first at a simultaneous drawing.

Leon M. Flanagan, et al., 25 IBLA 269 (June 24, 1976)

OIL AND GAS LEASES--Continued

BONDS

It is improper to cancel an oil and gas lease for failure of the lessee to file a bond required by regulation, 43 CFR 3104.1(b), where there are extenuating circumstances and where there is no impairment of third party rights and no adverse impact on the interest of the United States.

Estate of John P. Wagner and The Superior Oil Company, 26 IBLA 119 (July 26, 1976)

Where part of the lands in an oil and gas lease are included within the known geologic structure of a producing oil or gas field, the annual rental rate will be increased for all of the land in the lease and a bond required.

H. B. Cahoon Investment Company, John Oakason, 27 IBLA 210 (Oct. 6, 1976)

CANCELLATION

It is improper to dismiss a protest against issuance of an oil and gas lease applied for pursuant to the Act of May 21, 1930, 30 U.S.C. § 301 et seq. (1970), for lands underlying a railroad right-of-way granted under the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented without a reservation for minerals. In such case title to the mineral estate underlying the right-of-way is no longer held by the United States and, therefore, a lease issued pursuant to the 1930 Act is void and must be canceled.

Amerada Hess Corporation, 24 IBLA 360 (Apr. 27, 1976) 83 I.D. 194

An oil and gas lease issued for 2,960 acres in violation of administrative regulations need not be canceled in its entirety, in the absence of an intervening qualified applicant.

John T. Stewart III, Harlan C. Altman, Jr. (Trustee), 25 IBLA 306 (June 28, 1976) 83 I.D. 247

The Bureau of Land Management has no authority to reinstate an oil and gas lease terminated by operation of law for failure to pay rental on or before the anniversary date when a valid lease for the same land has been issued prior to the filing of the petition for reinstatement. Therefore, unless the first lease is deemed not to have terminated, it is erroneous to cancel the subsequent valid lease.

S. Norman Stark, 26 IBLA 87 (July 19, 1976)

The statute, 30 U.S.C. § 188(b) (1970), and regulation, 43 CFR 3108.2-3, concerning the cancellation of oil and gas leases are discretionary not mandatory.

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

It is improper to cancel an oil and gas lease for failure of the lessee to file a bond required by regulation, 43 CFR 3104.1(b), where there are extenuating circumstances and where there is no impairment of third party rights and no adverse impact on the interests of the United States.

Estate of John P. Wagner and The Superior Oil Company, 26 IBLA 119 (July 26, 1976)

The signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is the act that constitutes issuance of the lease and creates a binding contract; such a lease contract is not subject to cancellation by reason of inclusion of leased land in a known geologic structure as of a date subsequent to lease issuance.

Barbara C. Lisco, 26 IBLA 340 (Sept. 7, 1976)

Where an oil and gas lease offer when first filed is not accompanied by full payment of the first year's rental, but is deficient only $20, not more than 10 percent of the required amount, and the lease is subsequently issued with a notice that the deficiency must be paid within 30 days under penalty of cancellation, the lease must be canceled pursuant to 43 CFR 3103.3-1 where the required deficiency payment is not submitted within the prescribed period.

Albert J. Finer, 27 IBLA 61 (Sept. 27, 1976)

Where the Bureau of Land Management sends notice to an offeror, pursuant to 43 CFR 3103.3-1, that the first year's rental accompanying an oil and gas lease offer is deficient in the amount of 41 cents, and that the deficiency must be paid within 30 days from notice under penalty of cancellation of the lease, the lease will be canceled where the lessee receives the notice, yet fails to pay.

Zona R. Jackson, 27 IBLA 217 (Oct. 6, 1976)

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing of simultaneous oil and gas lease offers and the vice president and secretary of the corporation also filed applications for the same parcel of land in the same drawing, as individuals, the offer of the corporation must be rejected because the officers of the corporation stand in a fiduciary relationship to the corporation and thereby increase its chances to be the successful applicant.

Panra Corporation, 27 IBLA 220 (Oct. 7, 1976)

When a noncompetitive oil and gas lease has been issued and includes land within a known geologic structure which was ascertained prior to the issuance of the lease, the lease

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

was erroneously issued and must be canceled to the extent that it included land within the KGS.

David A. Provinse, 27 IBLA 376 (Nov. 5, 1976)

It is proper to require a trustee of a trust, who is filing oil and gas offers therefor, to file any information relevant to determining whether the offeror is a qualified offeror, including without limitation, data bearing upon multiple filings in a simultaneous procedure. However, it is impermissible for the Bureau of Land Management to require the trustee to furnish other information not germane to those inquiries. The cancellation of a lease for failure to furnish data, some of which was not properly required, will be set aside on appeal and the trustee afforded another opportunity to furnish such data as was properly required.

Margo Panos (Trust), Gus G. Panos (Trustee), 28 IBLA 1 (Nov. 5, 1976)

Where the Bureau of Land Management sends notice to an offeror at his record address, pursuant to 43 CFR 3103.3-1, that the first year's rental accompanying his noncompetitive oil and gas lease offer is deficient and such notice is returned to the Bureau marked "Unclaimed" by the post office, the cancellation of the lease will be set aside and the notice will not be considered to have been served on the offeror, pursuant to 43 CFR 1810.2(b), when the post office has failed to forward the notice in accordance with a request by the offeror to forward all mail and other mail has, in fact, been forwarded.

Jack R. Coombs, 28 IBLA 53 (Nov. 9, 1976)

COMPETITIVE LEASES

Where high bids, not clearly spurious or irresponsible, tendered at a competitive sale of oil and gas leases, are rejected solely on the statement of a field official that the bids are inadequate, and no basis whatever for that conclusion is reflected in the case records, the decision will be set aside and the cases will be remanded for the compilation of a proper record and readjudication of the acceptability of the bids.

Frances J. Richmond, 24 IBLA 303 (Apr. 5, 1976)

A rejection of high bids tendered for two parcels of land offered at a sale of competitive oil and gas leases will be affirmed on appeal where the case file contains memoranda from the U.S. Geological Survey sufficient to establish that the pre-sale minimum evaluation for the two tracts was accomplished by the lease sale committee consisting of an engineer and a geologist and their evaluation was considerably in excess of appellant's bids.

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Under 43 CFR 3120.3-1, the United States reserves the right to reject any and all bids. However, a decision involving the exercise of administrative discretion must be supportable on a rational basis.

Arkla Exploration Co., 25 IBLA 220 (June 21, 1976)

In the absence of specific statutory authority to lease, the Secretary of the Interior has implied authority, as guardian of the public's natural resources, to lease an oil and gas deposit under his jurisdiction when it is in danger of being drained by wells drilled on adjacent land. However, such protective leases may be issued only by competitive bidding.

James L. Santy, 25 IBLA 390 (July 6, 1976)

The requirement that a bidder in a competitive oil and gas lease sale must submit one-fifth of the amount bid with his bid is mandatory and will not be waived.

Sarkeys, Inc., 26 IBLA 141 (Aug. 2, 1976)

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale on the basis of an inadequate bonus where the rejection has a reasonable basis in fact.

Where high bids tendered at a competitive oil and gas lease sale, which are not clearly spurious or irresponsible, are rejected solely on the basis of a statement by an official that the bids are inadequate and no factual basis for that conclusion appears in the case record, the decision will be set aside and the cases remanded for compilation of a proper record and readjudication of the acceptability of the bids.

Yates Petroleum Corporation, 27 IBLA 224 (Oct. 12, 1976)

Where the ostensible high bidder for an oil and gas lease sold by competitive bidding is determined to be unqualified under the regulations and notice of sale, and the second high bid, proper in all respects, greatly exceeds the government's presale evaluation for the parcel, it is proper to consider such second high bid and to issue a lease therefor, if it is in the government's best interest to do so.

Phillips Petroleum Company, 28 IBLA 175 (Nov. 24, 1976)

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY

The recommendations of the Forest Service are important in determining whether or not an oil and gas lease should issue for public lands but are not conclusive. Ultimately, the Secretary of the Interior is entrusted with the responsibility of determining whether or not to issue a lease.

Where the Bureau of Land Management rejects an oil and gas lease offer for public lands within a national forest solely on the objection of the Forest Service and where the Bureau officials did not make an independent determination whether leasing the lands is or is not in the public interest, the rejection is not a proper exercise of discretion and the case will be remanded to the Bureau for further consideration.

Stanley M. Edwards, 24 IBLA 12 (Feb. 4, 1976) 83 I.D. 33

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction of the acquired land described in a lease offer be obtained prior to the issuance of an oil and gas lease for such land. The Department of the Interior has no discretionary authority to lease such land where the consent is withheld.

Sallie B. Sanford, 24 IBLA 31 (Feb. 17, 1976)

The Mineral Leasing Act of 1920 vests the Department of the Interior with the discretion to lease public lands for oil and gas, including public lands in the national forests. Although this Department gives most careful consideration to the recommendations of the Forest Service, the latter does not have a veto power over public land leasing.

Chevron Oil Company, 24 IBLA 159 (Mar. 15, 1976)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where a Bureau of Land Management districtwide environmental analysis record establishes the likelihood that significant archaeological values are prevalent in the district and may be found in the land embraced by leases in that district, a special protective stipulation is not unreasonable solely because no archaeological values have yet been discovered in the lease offer.

Cecil A. Walker, Alan C. F. Dille', 26 IBLA 71 (July 9, 1976)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY--Continued

land use values as a condition precedent to the issuance of an oil and gas lease. But where a State Office of the Bureau of Land Management seeks to impose a "no surface occupancy" stipulation, the most stringent of stipulations, without a showing that it has considered less stringent stipulations, the decisions will be set aside. Where the stated basis for the imposition of the stipulation is the threat of oil and gas activities to automobile racing, the decision will be set aside particularly where the lease offers include land primarily outside the boundaries of the racing grounds withdrawal.

Vern K. Jones, et al., 26 IBLA 165 (Aug. 4, 1976)

When the Forest Service recommends against issuing an oil and gas lease for public land because the land has been included within a wilderness candidate study area, the Bureau of Land Management must make an independent determination on whether the lease, with stipulations, should be issued. A case will be remanded for such a determination especially where the Forest Service on appeal has reconsidered and recommends leasing with certain stipulations.

Fred P. Blume, 28 IBLA 58 (Nov. 9, 1976)

When the Forest Service recommends against issuing an oil and gas lease for public land because the land has been included within a wilderness candidate study area, the Bureau of Land Management must make an independent determination on whether not to issue a lease or whether issuance of a lease subject to appropriate stipulations is in the public interest. A case will be remanded to the Bureau of Land Management for an independent determination where it is evident that such has not been done.

Kenneth F. Cummings and A. W. Fleming, Empire Resources, Inc., 28 IBLA 73 (Nov. 12, 1976)

DISCRETION TO LEASE

In the absence of a withdrawal of land from mineral leasing, public lands are subject to leasing for oil and gas in the discretion of and under conditions imposed by the Secretary of the Interior.

Where the Bureau of Land Management rejects an oil and gas lease offer for public lands within a national forest solely on the objection of the Forest Service and where the Bureau officials did not make an independent determination whether leasing the lands is or is not in the public interest, the rejection is not a proper exercise of discretion and the case will be remanded to the Bureau for further consideration.

Stanley M. Edwards, 24 IBLA 12 (Feb. 4, 1976)
83 I.D. 33

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

While the Secretary of the Interior has the authority to reject oil and gas lease offers in the public interest, such rejection must be rationally related to that public interest. Where an offer to lease lands in an "elk winter pasture" is rejected a few months after issuing a similar lease to another person for lands within the same area, which lands are apparently indistinguishable from the lands in the rejected lease offer, such offer will be remanded for reconsideration.

L. A. Idler, 24 IBLA 28 (Feb. 11, 1976)

National forest lands, some of which are in a wilderness area, a roadless area, or a memorial parkway, which have not been withdrawn from oil and gas leasing, are subject to leasing in the discretion of and under conditions imposed by the Secretary of the Interior. However, where the Secretary of the Interior has specifically determined by formal publication of a memorandum that lands in a certain section of a national forest are to be withheld from leasing, he has exercised his plenary discretion to refuse to issue leases, and subsequent offers for lands in this designated area restricted from leasing are properly rejected.

James Donoghue, et al., 24 IBLA 210 (Mar. 23, 1976)

Uncertainty of title to oil and gas in an acquired land tract is sufficient ground for the rejection of a lease offer in the exercise of the Secretary's discretionary authority over leasing. The burden is on the lease applicant to demonstrate that the minerals he seeks to lease are owned by the United States as an acquired interest. A decision rejecting an offer will be affirmed where appellant has failed to meet this burden and a significant question of title remains.

Don Jumper, 24 IBLA 218 (Mar. 24, 1976)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act.

While the Bureau of Land Management may reject oil and gas lease offers or require stringent protective stipulations in order to protect the environment, such action must be supported by facts of record. Where such action is taken and is supported only by statements that leasing would not be in the public interest, the case will be remanded to the Bureau for a more complete exposition of the basis for the action.

Cartridge Syndicate, 25 IBLA 57 (May 20, 1976)

When the Secretary of the Interior determines that an oil and gas lease is to be issued

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

for a particular tract, it must be issued to the first qualified applicant. An applicant is not qualified because of his failure to comply with 43 CFR 3112.2-1(a) when he fails to provide the name of the state in which the parcel of land is located.

Ishmael Guerra, 26 IBLA 116 (July 26, 1976)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. But where a State Office of the Bureau of Land Management seeks to impose a "no surface occupancy" stipulation, the most stringent of stipulations, without a showing that it has considered less stringent stipulations, the decisions will be set aside. Where the stated basis for the imposition of the stipulation is the threat of oil and gas activities to automotile racing, the decision will be set aside particularly where the lease offers include land primarily outside the boundaries of the racing grounds withdrawal.

Vern K. Jones, et al., 26 IBLA 165 (Aug. 4, 1976)

The Secretary has discretionary authority to reject an oil and gas lease offer where federal title to the oil and gas deposits is uncertain.

Leonard R. McSweyn, David A. Provinse, 26 IBLA 376 (Sept. 9, 1976)

Where title to the minerals in a tract of acquired land which is the subject of an oil and gas lease offer cannot be determined from records in the possession of the BLM, the burden is on the applicant to search the land records to ascertain the chain of title and establish the eligibility of the tract for leasing. Applicant may be required to furnish evidence from the county recorder's office in the nature of a title abstract sufficient to allow the Solicitor to render a legal opinion regarding title to the oil and gas in the tract sought for leasing. Rejection of the offer in the exercise of the Secretary's discretion over leasing is proper where applicant declines to provide such information.

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant is not sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a United States interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Jean Oakason, 27 IBLA 41 (Sept. 22, 1976)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale on the basis of an inadequate bonus where the rejection has a reasonable basis in fact.

Yates Petroleum Corporation, 27 IBLA 224 (Oct. 12, 1976)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. Where the land is part of a designated winter pasture for a large elk herd, and it has been determined that oil and gas operations would adversely affect that use of the land to a substantial extent, rejection of the lease offer will be affirmed.

L. A. Idler (Supp.), 28 IBLA 8 (Nov. 5, 1976)

When the Forest Service recommends against issuing an oil and gas lease for public land because the land has been included within a wilderness candidate study area, the Bureau of Land Management must make an independent determination on whether the lease, with stipulations, should be issued. A case will be remanded for such a determination especially where the Forest Service on appeal has reconsidered and recommends leasing with certain stipulations.

Fred P. Blume, 28 IBLA 58 (Nov. 9, 1976)

When the Forest Service recommends against issuing an oil and gas lease for public land because the land has been included within a wilderness candidate study area, the Bureau of Land Management must make an independent determination on whether not to issue a lease or whether issuance of a lease subject to appropriate stipulations is in the public interest. A case will be remanded to the Bureau of Land Management for an independent determination where it is evident that such has not been done.

Kenneth F. Cummings and A. W. Fleming, Empire Resources, Inc., 28 IBLA 73 (Nov. 12, 1976)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest.

The Secretary of the Interior may reject a noncompetitive offer to lease for oil and gas when he determines that it is in the public interest to do so because the lands applied for are within the Interstate 70 scenic corridor and are under consideration for inclusion in a primitive area.

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The Secretary in the exercise of his discretionary authority, may refuse to lease public lands for oil and gas, even though the lands are not withdrawn from oil and gas leasing.

Pinnacle Mining and Exploration Company, Inc., 28 IBLA 249 (Dec. 20, 1976)

DRILLING

To qualify for a 2-year extension of an oil and gas lease pursuant to 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations were diligently prosecuted on the leasehold on the last day of the lease term, with bona fide intent to complete a producing well as demonstrated by subsequent circumstances, i.e., by a showing that the operation was thereafter expeditiously carried forward to such an extent that the effort constituted an acceptable test of a geologic stratum where it could reasonably be anticipated that commercial quantities of oil and/or gas might be discovered.

Charles M. Goad, 25 IBLA 130 (June 7, 1976)

EXTENSIONS

In order to support extension of an oil and gas lease on the basis of production within a pre-existing unit to which the lease was not previously committed, the lessee must reach an agreement with the parties to the unit agreement and the unit operating agreement in accordance with the procedures for subsequent joinder outlined therein and submit evidence of such agreement for approval of the Oil and Gas Supervisor, United States Geological Survey, prior to expiration of the lease. The mere sending of notice by the lessee to the Bureau of Land Management announcing his intention to commit his lease to an existing unit agreement is not sufficient.

Duncan Miller, 25 IBLA 125 (June 7, 1976)

To qualify for a 2-year extension of an oil and gas lease pursuant to 30 U.S.C. § 226(e) (1970), it must be shown that actual drilling operations were diligently prosecuted on the leasehold on the last day of the lease term, with bona fide intent to complete a producing well as demonstrated by subsequent circumstances, i.e., by a showing that the operation was thereafter expeditiously carried forward to such an extent that the effort constituted an acceptable test of a geologic stratum where it could reasonably be anticipated that commercial quantities of oil and/or gas might be discovered.

Assertions, even if established, that employees of the Bureau of Land Management assured an oil and gas lessee that drilling a leasehold on the last day of the lease term was sufficient, without more, to extend the lease, and

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

that the lessee relied upon such representations, afford the lessee no relief. Rights not authorized by law cannot be acquired through misinformation given by employees of the Bureau of Land Management.

Charles M. Goad, 25 IBLA 130 (June 7, 1976)

Where an oil and gas lease in its extended term because of production has ceased production for a known period and the Geological Survey questions whether the lease is currently capable of production, the lease will not terminate by operation of law if the lessee can show that any of three sets of conditions or circumstances exist: (1) reworking or drilling operations were begun on the lease within 60 days after cessation of production; (2) operations or production had been suspended by order or with the consent of the Secretary; and (3) the lessee can make an acceptable showing within 60 days after notice from the Survey that there is a well in a producing status on the leasehold.

Emily H. Oien, 25 IBLA 193 (June 16, 1976)

An oil and gas lease will expire by operation of law at the end of its primary term unless oil or gas is being produced in paying quantities at that time or actual drilling operations were commenced prior to the end of the primary term and are being diligently prosecuted, thereby entitling the lessee to an extension of the lease. A once productive well which ceases its productive capability during the initial term will not prevent expiration of the lease.

Rajac Industries, Inc., 26 IBLA 202 (Aug. 11, 1976)

An oil and gas lease issued effective Oct. 1, 1966, for a term of 10 years expired at midnight on Sept. 30, 1976, unless extended by some provision of statute or regulation.

Duncan Miller, 28 IBLA 62 (Nov. 10, 1976)

FIRST QUALIFIED APPLICANT

Where an offeror failed to take an appeal from a decision issuing a noncompetitive oil and gas lease but erroneously rejecting certain available lands while correctly rejecting other lands in the offer and the offeror failed to retender rental for the erroneously rejected lands, and where the error could be readily apparent to the offeror, and the offeror acquiesced for a year and a half in the lease as issued, such failure precludes the amendment of the lease and the offeror is deemed to have abandoned his preference right as the first qualified applicant to lease the land which was erroneously rejected.

John Oakason, 23 IBLA 336 (Jan. 21, 1976)

OIL AND GAS LEASES--Continued

FIRST QUALIFIED APPLICANT--Continued

When the Secretary of the Interior determines that an oil and gas lease is to be issued for a particular tract, it must be issued to the first qualified applicant. An applicant is not qualified because of his failure to comply with 43 CFR 3112.2-1(a) when he fails to provide the name of the state in which the parcel of land is located.

Ishmael Guerra, 26 IBLA 116 (July 26, 1976)

An oil and gas lease offer filed on behalf of a corporation may incorporate evidence of qualifications by reference to the serial number of a case record in which such evidence has already been filed with the Bureau of Land Management (BLM). However, reference to a file which contains no evidence of the authority of the officer signing the lease offer to execute such instruments on behalf of the corporation is not sufficient and requires rejection of the offer. The fact that the required evidence is on file in another state office of the BLM under another serial number will not avail applicant where the lease offer contains no reference to that file.

An oil and gas lease offer filed by a corporation under the simultaneous filing procedures, 43 CFR Subpart 3112, which is defective for failure to provide evidence of corporate qualifications may not be cured by subsequent filing of supplemental evidence after the drawing is held and must be rejected.

Churchill Corporation, 27 IBLA 234 (Oct. 12, 1976)

Where a rubber stamp constitutes an offeror's signature on a simultaneous oil and gas lease entry card, the Bureau of Land Management need not presume that the offeror rather than an agent stamped the card, and where no agent's statement has been submitted, BLM may take appropriate action to establish the circumstances under which the signature was stamped on the card.

Evelyn Chambers, 27 IBLA 317 (Nov. 4, 1976)
83 I.D. 533

FUTURE AND FRACTIONAL INTEREST LEASES

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, sucessfully drawn at a noncompetitive lease simultaneous drawing, is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

James E. Belden, Henry Y. Yoshino, 23 IBLA 216 (Jan. 6, 1976)

Thelma Wright, Geral Beveridge, 27 IBLA 198 (Oct. 4, 1976)

OIL AND GAS LEASES--Continued

FUTURE AND FRACTIONAL INTEREST LEASES--Continued

In accordance with the policy established by 43 CFR 3130.4-4, the Department ordinarily issues oil and gas leases only to offerors who, upon issuance of the lease, will own at least 50 percent of the operating rights of a lease.

L. E. Lindvay, Sr., et al., 23 IBLA 218 (Jan. 8, 1976)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

Michael Shearn, 24 IBLA 259 (Mar. 29, 1976)

Robert L. Williams, 24 IBLA 311 (Apr. 20, 1976)

Mary Nan Spear, 25 IBLA 34 (May 5, 1976)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by 43 CFR 3130.4-4 showing the extent of his ownership of operating rights for the fractional mineral interest not owned by the United States.

June Brooks, 25 IBLA 326 (June 30, 1976)

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany her offer with the statement required by the regulation showing the extent of her ownership of operating rights to the fractional mineral interests not owned by the United States.

Beatrice E. Marchand, 26 IBLA 180 (Aug. 9, 1976)

A simultaneous acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interests not owned by the United States, nor can such defect be cured by submitting the information on appeal.

Jelenko Stefanovic, 26 IBLA 229 (Aug. 17, 1976)

An oil and gas lease offer for land in which the United States owns a fractional mineral

OIL AND GAS LEASES--Continued

FUTURE AND FRACTIONAL INTEREST LEASES--Continued

interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

Grady Argenbright, 27 IBLA 24 (Sept. 17, 1976)

An acquired lands oil and gas lease offer, for lands in which the United States owns only a fractional mineral interest, is defective and is properly rejected when the applicant fails to accompany its offer with the statement required by the regulation showing the extent of its ownership of operating rights to the fractional mineral interest not owned by the United States. Under the regular or "over-the-counter" filing procedure, however, if the offeror submits its statement of operating rights with its appeal, the defect may be considered cured with priority of filing as of that time.

Arkansas Western Gas Company, 27 IBLA 207 (Oct. 6, 1976)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

An oil and gas lease offer for lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. If an agent signs such statement, rather than the offeror, the regulations require that evidence be filed of the authority of the agent to sign the statement. The agent's signature will be acceptable only if the authorization meets the specifications of the regulations.

An oil and gas lease offer for lands in which the United States owns a fractional mineral interest which is not accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States is defective and such defect cannot be cured by the submission of further information.

Frank G. Wells, 28 IBLA 113 (Nov. 15, 1976)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

Susan R. Smith, 28 IBLA 173 (Nov. 24, 1976)

KNOWN GEOLOGICAL STRUCTURE

Lands within a known geologic structure of a producing oil or gas field may only be leased by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected.

One who attacks a determination by the Geological Survey that lands are situated within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing of error.

James A. Wallender, 26 IBLA 317 (Aug. 30, 1976)

The signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is the act that constitutes issuance of the lease and creates a binding contract; such a lease contract is not subject to cancellation by reason of inclusion of leased land in a known geologic structure as of a date subsequent to lease issuance.

Barbara C. Lisco, 26 IBLA 340 (Sept. 7, 1976)

Where part of the lands in an oil and gas lease are included within the known geologic structure of a producing oil or gas field, the annual rental rate will be increased for all of the land in the lease and a bond required.

H. B. Cahoon Investment Company, John Oakason, 27 IBLA 210 (Oct. 6, 1976)

When a noncompetitive oil and gas lease has been issued and includes land within a known geologic structure which was ascertained prior to the issuance of the lease, the lease was erroneously issued and must be canceled to the extent that it included land within the KGS.

In the absence of an express revocation, the determination of an unnamed, undefined known geologic structure is not canceled when the structure is omitted from a redefinition of a neighboring but separate field, nor is such a determination canceled by an erroneous certification on a lease that the lands therein are not within a KGS.

David A. Provinse, 27 IBLA 376 (Nov. 5, 1976)

Ordinarily, the signing of an oil and gas lease offer by the authorized officer of the Bureau

OIL AND GAS LEASES--Continued

KNOWN GEOLOGICAL STRUCTURE--Continued

of Land Management is equivalent to issuance of the lease and creates a binding contract. However, where a Secretarial Order provides that all oil and gas noncompetitive offers must, prior to issuance of a lease, be referred to Geological Survey for a determination of whether the lands are within a known geological structure, and the authorized officer fails to follow such procedure prior to the signing, such signing is not authorized and, therefore, not binding on the Secretary.

Nola Grace Ptasynski (Supp.) (On Court Remand), 28 IBLA 256 (Dec. 20, 1976)

Where the record does not disclose sufficient facts upon which to make determinations whether a Bureau of Land Management officer who signed an oil and gas lease possessed the authority to do so, when the date of ascertainment of a known geologic structure actually occurred and whether the United States Geological Survey had sufficient information to make a known geologic structure determination, a hearing may be ordered so that a complete record may be be developed.

William T. Alexander, 28 IBLA 277 (Dec. 22, 1976)

LANDS SUBJECT TO

A noncompetitive oil and gas lease offer for acquired land in an incorporated city, is properly rejected since the Mineral Leasing Act for Acquired Lands specifically excludes such lands from its provisions.

Sallie B. Sanford, 23 IBLA 312 (Jan. 16, 1976)

Public lands in national forests are presently open to oil and gas leasing regardless of whether they are part of an officially designated wilderness area. However, where the land is within such an established wilderness area, the Secretary of Agriculture has the statutory authority to prescribe reasonable stipulations for the protection of the wilderness character of the land consistent with the use of the land for the purpose of the lease, although only the Secretary of the Interior may close the land to leasing or prohibit the issuance of a lease.

Stanley M. Edwards, 24 IBLA 12 (Feb. 4, 1976) 83 I.D. 33

National forest lands, some of which are in a wilderness area, a roadless area, or a memorial parkway, which have not been withdrawn from oil and gas leasing, are subject to leasing in the discretion of and under conditions imposed by the Secretary of the Interior. However, where the Secretary of the Interior has specifically determined by

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

formal publication of a memorandum that lands in a certain section of a national forest are to be withheld from leasing, he has exercised his plenary discretion to refuse to issue leases, and subsequent offers for lands in this designated area restricted from leasing are properly rejected.

James Donoghue, et al., 24 IBLA 210 (Mar. 23, 1976)

The amount of acreage contained in an oil and gas lease may be reduced where, upon resurvey of the land, it is determined that the area under lease is actually smaller than the area shown by the original survey.

Grace M. Brown, et al., 24 IBLA 301 (Apr. 1, 1976)

Because the Mineral Leasing Act for Acquired Lands specifically excludes the leasing of land located within an incorporated city, town, or village, a noncompetitive oil and gas lease offer for acquired land within the boundaries of such a city, town, or village is properly rejected.

In the absence of specific statutory authority to lease, the Secretary of the Interior has implied authority, as guardian of the public's natural resources, to lease an oil and gas deposit under his jurisdiction when it is in danger of being drained by wells drilled on adjacent land. However, such protective leases may be issued only by competitive bidding.

James L. Santy, 25 IBLA 390 (July 6, 1976)

Where an oil and gas lease offer is rejected because the land was received by the United States as part of a sec. 8, Taylor Grazing Act exchange, and the record does not indicate such an exchange took place the case will be remanded for consideration in light of the actual record.

Husky Oil Company of Delaware, 26 IBLA 194 (Aug. 11, 1976)

Land included within an outstanding oil and gas lease is not available for leasing and an oil and gas lease offer filed for such land must be rejected.

The Secretary has discretionary authority to reject an oil and gas lease offer where federal title to the oil and gas deposits is uncertain.

Leonard R. McSweyn, David A. Provinse, 26 IBLA 376 (Sept. 9, 1976)

When the Forest Service recommends against issuing an oil and gas lease for public land

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

because the land has been included within a wilderness candidate study area, the Bureau of Land Management must make an independent determination on whether the lease, with stipulations, should be issued. A case will be remanded for such a determination especially where the Forest Service on appeal has reconsidered and recommends leasing with certain stipulations.

Fred P. Blume, 28 IBLA 58 (Nov. 9, 1976)

When the Forest Service recommends against issuing an oil and gas lease for public land because the land has been included within a wilderness candidate study area, the Bureau of Land Management must make an independent determination on whether not to issue a lease or whether issuance of a lease subject to appropriate stipulations is in the public interest. A case will be remanded to the Bureau of Land Management for an independent determination where it is evident that such has not been done.

Kenneth F. Cummings and A. W. Fleming, Empire Resources, Inc., 28 IBLA 73 (Nov. 12, 1976)

An oil and gas offer embracing land in the bed of a navigable river, which is State land, is properly rejected.

Leonard R. McSweyn, 28 IBLA 100 (Nov. 15, 1976)
83 I.D. 556

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest.

The Secretary of the Interior may reject a noncompetitive offer to lease for oil and gas when he determines that it is in the public interest to do so because the lands applied for are within the Interstate 70 scenic corridor and are under consideration for inclusion in a primitive area.

Pinnacle Mining and Exploration Company, Inc., 28 IBLA 249 (Dec. 20, 1976)

NONCOMPETITIVE LEASES

Where an offeror failed to take an appeal from a decision issuing a noncompetitive oil and gas lease but erroneously rejecting certain available lands while correctly rejecting other lands in the offer and the offeror failed to retender rental for the erroneously rejected lands, and where the error could be readily apparent to the offeror, and the offeror acquiesced for a year and a half in the lease as issued, such failure precludes the amendment of the lease and the offeror is deemed to have abandoned his preference right as the first qualified applicant to lease the land which was erroneously rejected.

John Oakason, 23 IBLA 336 (Jan. 21, 1976)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

An offer is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rentals within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due.

John Paul Pratt, 24 IBLA 110 (Mar. 1, 1976)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due. An attempt to make payment after the close of office hours on the day the payment is due will not prevent the disqualification.

W. Duane Kennedy, 24 IBLA 152 (Mar. 10, 1976)

Where an oil and gas lease offer is rejected because the land was received by the United States as part of a sec. 8, Taylor Grazing Act exchange, and the record does not indicate such an exchange took place the case will be remanded for consideration in light of the actual record.

Husky Oil Company of Delaware, 26 IBLA 194 (Aug. 11, 1976)

Lands within a known geologic structure of a producing oil or gas field may only be leased by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected.

James A. Wallender, 26 IBLA 317 (Aug. 30, 1976)

An offeror is properly disqualified from receiving a noncompetitive oil and gas lease on an offer which is drawn first from a group of simultaneously filed offers when he fails to pay the first year's advance rental within 15 days of his receipt of notice that such rental is due, and the delay is attributable to his posting of the rental check with insufficient postage.

Edgar C. Bennington, Jr., 28 IBLA 65 (Nov. 10, 1976)

PRODUCTION

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated when the lessee shows that its failure to pay the rental on

OIL AND GAS LEASES--Continued

PRODUCTION--Continued

or before the anniversary date was justifiable.

Great Basins Petroleum Co., 24 IBLA 117 (Mar. 1, 1976)

REINSTATEMENT

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time may be reinstated only when the lessees show that their failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence. The absence of a lessee either on vacation or on job training is insufficient to satisfy the statutory criteria.

Sara Turcsan, Donna Turcsan, 23 IBLA 370 (Jan. 23, 1976)

An oil and gas lease terminated by operation of law for failure to pay timely the advance rental may be reinstated only where the lessee shows that his failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence. Past adherence to the requirement of timely payment does not justify a subsequent failure to make timely payment. Mailing a rental payment at Chicago, Illinois, to Salt Lake City, Utah, 1 day before the due date does not constitute reasonable diligence.

Henry Carter, 24 IBLA 70 (Feb. 24, 1976)

A petition for reinstatement of an oil and gas lease which has expired by operation of law for failure to make payment of the annual rentals on time will be denied where the petition is filed with the appropriate office more than 15 days after receipt of notification of termination of the lease.

Where the advance rental check is received within 20 days after the anniversary date, the Bureau may deposit said check in an "unearned" account in order to preserve the right of the lessee to petition for reinstatement of the terminated lease and to safeguard the check, create a record of the payment, and bring it under accounting control. This does not signify acceptance of the payment, or indicate that the lease has not terminated, or create an estoppel against the government.

John J. Nordhoff, Dean Kirk, 24 IBLA 73 (Feb. 24, 1976)

Extenuating circumstances outside the control of the lessee occurring near the anniversary date of the lease may constitute justifiable cause for a late rental payment where the circumstances are the proximate cause of the failure to make timely payment. However, where appellant has delayed payment until just before the due date and has entrusted

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

the function to an agent whose subagent neglects to make payment timely, the lack of diligence on the part of the lessee and/or his agent and/or subagent, and not the adverse circumstances confronting appellant's agent, constitute the proximate cause of the late payment and a decision denying reinstatement will be affirmed.

Lucille Lipphardt, 24 IBLA 81 (Feb. 25, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time cannot be reinstated when the petitioner fails to show that the late payment of rental was justifiable or not due to a lack of reasonable diligence. Loss of a checkbook through theft 5 days before the due date for payment does not establish causality sufficient to constitute a justifiable excuse.

John E. Stengel, 24 IBLA 98 (Feb. 25, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely may be reinstated only if the lessee shows by satisfactory evidence that the failure to pay the rental on or before the anniversary date was either justifiable or was not due to a lack of reasonable diligence. Allowing 1 day for the rental payment to reach Billings, Montana, from Eau Claire, Michigan, is not an exercise of reasonable diligence, and inability to pay is not a justifiable reason for failure to make timely payment.

Frank Thompson, 24 IBLA 105 (Mar. 1, 1976)

An oil and gas lease terminated because of failure to pay rental timely, may be reinstated only where it is shown that such failure was either justifiable or not due to a lack of reasonable diligence. The burden of satisfying either of those criteria rests upon appellant.

Reasonable diligence requires that the payment be sent sufficiently in advance of the due date to account for normal delays in handling and delivery of the mails. Absent reasonable diligence, a lease may be reinstated if the delay was justifiable. This generally envisages factors beyond appellant's control, which were the proximate cause of the failure to pay timely. Thus, proximity in time and causality of the untoward occurrence are essential elements required to be shown.

Earl Chancellor, 24 IBLA 121 (Mar. 1, 1976)

Under 30 U.S.C. § 188(c) (1970), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless the rental payment is tendered at the proper office within 20 days of the due date.

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Cashing of an oil and gas rental check, received more than 20 days after due, does not constitute a waiver which would permit reinstatement of a terminated lease in violation of 30 U.S.C. § 188(c) (1970), despite wording on the check that "by endorsement this check when paid is accepted in full payment * * *."

Edward Malz, 24 IBLA 251 (Mar. 26, 1976)
83 I.D. 106

Reasonable diligence requires transmitting a rental payment so that it would normally be received in the appropriate office on or before the anniversary date considering the method of transmission, normal delays in handling, and the distance involved. A payment that is late because it was inadvertently sent by the lessee to the wrong address is neither justifiable nor the result of reasonable diligence.

Hilo Bell Mining & Oil Co., Inc., 24 IBLA 255 (Mar. 29, 1976)

An oil and gas lease which has terminated by operation of law for failure to pay the annual rental on or before the due date may not be reinstated unless, among other things, payment has been tendered within 20 days of the anniversary date.

Merilyn K. Buxton, C. B. Sharpe, 24 IBLA 269 (Mar. 29, 1976)

An oil and gas lease may be reinstated where it appears that the lessee's failure to pay annual rental on time is due tot he death of a member of the family in close proximity to the anniversary date of the lease.

Fredres E. Laubaugh, 24 IBLA 306 (Apr. 5, 1976)

An oil and gas lease, terminted for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioned shows that the failure was either justifiable or not due to a lack of reasonable diligence.

Bobbie Arnold, 24 IBLA 352 (Apr. 23, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated when the lessee shows that his failure to pay the rental on or before the anniversary date was not due to a lack of reasonable diligence.

An oil and gas lease, terminated because the advance rental was received 1 day after the due date, may be reinstated where it is shown that the lessee mailed the rental payment 3 days prior to the due date from the main post office in the same city where the BLM's

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

field office is located and the postal authorities verify that there had been a delay in the processing of the mail at that particular time. Under these circumstances, the lessee will be considered to have mailed the payment with due diligence.

A. Helander, 25 IBLA 54 (May 18, 1976)

An oil and gas lease which has terminated by operation of law due to late payment of the annual rental may not be reinstated where the failure to pay on time was due to a lack of reasonble diligence and was not justifiable. Late payment due to a mistaken address is neither justifiable nor demonstrative of reasonable diligence.

Warren Koch, 25 IBLA 61 (May 28, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on or before the anniversary date may be reinstated only upon a showing that the failure to pay on time was either justifiable or not due to lack of reasonable diligence. Inadvertence of the lessee's employee in misplacing the courtesy notice does not justify late payment.

Samuel J. Testagrossa, 25 IBLA 64 (May 28, 1976)

In order to constitute justifiable cause for lessee's failure to make timely rental payment for an oil and gas lease, the asserted extenuating circumstances must be the proximate cause of the late payment. A petition for reinstatement is properly denied where lessee's own statements disclose that this is not the case.

Arthur J. Jakobiak, 25 IBLA 147 (June 8, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time cannot be reinstated when the petition fails to show that the late payment was justifiable or not due to a lack of reasonable diligence. A payment that is late because it was inadvertently sent by the lessee to the wrong address is neither justifiable nor the result of reasonable diligence.

Frank H. Crosby, 25 IBLA 160 (June 14, 1976)

The regulations require that a petition for reinstatement of an oil and gas lease, terminated by operation of law for failure to make timely payment of the rental, must be filed within 15 days of receipt of notice by the lessee of such termination. A petition for reinstatement filed more than 15 days after receipt of such notice of termination, which notice informed lessee of the 15-day requirement, is properly denied.

Joseph S. Calabrese, 25 IBLA 241 (June 22, 1976)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

A petition for reinstatement of an oil and gas lease terminated for lack of timely payment of the rental is properly denied where the appellant does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. The inadvertence or negligence of the appellant's employee does not justify late payment of the rental.

The fact that the courtesy rental notice did not come to appellant's attention until 6 days after the rental due date is not a justifiable excuse for late payment of the rental.

James Donoghue, 25 IBLA 280 (June 25, 1976)

An oil and gas lease which has terminated by operation of law due to late payment of the an nual rental may be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence. Mailing the payment after noon on the day the payment is due shows a lack of reasonable diligence. Belief that the payment would arrive on time if deposited in a "special box" does not justify the late payment.

Constitution Petroleum Company, Inc., et al., 25 IBLA 319 (June 30, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated where it is shown that the lessee's failure to pay the rental timely was not due to a lack of reasonable diligence. Evidence which establishes that the payment due on Dec. 1, 1975, at the Eastern States Office, Bureau of Land Management, Silver Spring, Maryland, was delivered to a postal carrier on Nov. 11, 1975, is sufficient to demonstrate due diligence despite the fact that the envelope containing the payment was postmarked Dec. 8, 1975, and not received until Dec. 11, 1975, where a credible explanation of the delay has been furnished by the Post Office.

Paul D. Beaird, Jr. and Leon F. Scully, Jr., 26 IBLA 79 (July 13, 1976)

The Bureau of Land Management has no authority to reinstate an oil and gas lease terminated by operation of law for failure to pay rental on or before the anniversary date when a valid lease for the same land has been issued prior to the filing of the petition for reinstatement. Therefore, unless the first lease is deemed not to have terminated, it is erroneous to cancel the subsequent valid lease.

S. Norman Stark, 26 IBLA 87 (July 19, 1976)

An oil and gas lease, terminated by operation of law, 30 U.S.C. § 188(b) (1970), for failure to make timely payment of the rental on or before the anniversary date, can be reinstated only if the lessee shows that the failure was either justifiable or not due to a lack of reasonable diligence.

OIL AND GAS LEASES--Continued

REINSTATMENT--Continued

Where the facts of a case lend circumstantial support and credibility to lessees' assertion that they posted their rental payment sufficiently in advance of the time necessary to account for normal postal delays, the lease may be reinstated on the basis that the failure to make timely payment was not due to a lack of reasonable diligence.

Elliott and Leon Davis, 26 IBLA 91 (July 19, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on or before the anniversary date may be reinstated only upon a showing that the failure to pay on time was either justifiable or not due to a lack of reasonable diligence. Late payment of the rental is not justified by confusion concerning proper processing of the rental payment which resulted when the duty to make payment was transferred from the company's land manager to its accountant.

The fact that the courtesy rental notice was delayed in reaching appellant because it was sent to appellant's former address is not a justifiable excuse for lace payment.

Serio Exploration Company, 26 IBLA 106 (July 26, 1976)

Under 30 U.S.C. § 188(c) (1970), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless the rental payment is tendered at the proper office within 20 days of the due date.

Albert DiGiulio, Jr., Genuino J. Grande and Jeremy V. Cohen, 26 IBLA 169 (Aug. 4, 1976)

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the due date may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Sending a payment 2 days before the due date does not constitute reasonable diligence, nor does the fact that lessee was unaware of the terms of his lease render his tardiness justifiable.

L. J. Arrieta, 26 IBLA 188 (Aug. 10, 1976)

No petition for reinstatement of an oil and gas lease terminated by operation of law may be entertained if the full amount of rental due was not paid within 20 days after the anniversary date of the lease.

Where an oil and gas lease has terminated pursuant to 30 U.S.C. § 188(b) (1970), a petition for reinstatement is properly denied which fails to provide any explanation to show that the lessee's failure to tender the full amount of the rental when due was either

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

justified or not attributable to the lessee's lack of diligence.

Where, by prearrangement, as part of a business negotiation, a third party assumes responsibility for the payment of the annual rentals for two oil and gas leases which subsequently terminate by operation of law when the rental check is dishonored by the drawee bank, the leases will not be reinstated on the strength of the lessee's naked assertion that the uncollectability of the check was deliberately contrived as part of a scheme to deprive him of the lease so that the third party could be granted the leases unlawfully by a federal employee.

Stanley J. Pirtle, 26 IBLA 348 (Sept. 7, 1976)

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not meet the reasonable diligence requirement.

In petitioning for reinstatement of an oil and gas lease terminated by operation of law for failure to submit the rental payment on or before the anniversary date of the lease, forgetfulness, simple inadvertence, or ignorance of the regulations are not justifiable excuses for delay in making the rental payment.

Lula Mai Martin, 27 IBLA 360 (Nov. 4, 1976)

An oil and gas lease which has terminated by operation of law for failure to pay the annual rental on or before the due date may not be reinstated unless, among other things, payment has been tendered at the proper office within 20 days of the anniversary date.

A. E. White, et ux., 28 IBLA 91 (Nov. 12, 1976)

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the due date may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Sending a payment over a long distance 2 days before the due date does not constitute reasonable diligence.

Royal and Jean Clausing, 28 IBLA 129 (Nov. 19, 1976)

Where a lessee makes a deficient rental payment for his oil and gas lease claiming that such payment was determined in accordance with the rental or acreage figure stated in the lease, he will not be entitled to a Notice of Deficiency, pursuant to 43 CFR 3108.2-1, when it is shown that he received notice of an increase in the lease rental and, therefore, was not justified in relying on the original rental figure in the lease.

An oil and gas lease terminated by operation of law for failure to pay the full advance rental timely can only be reinstated when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence.

Lone Star Producing Company, 28 IBLA 132 (Nov. 19, 1976)

There is no basis for reinstating an oil and gas lease, terminated for failure to pay rental timely, because of alleged reasonable diligence when the payment was mailed no earlier than the date the rental was due.

An oil and gas lease terminated for failure to pay rental timely may not be reinstated where the delay in paying the rental was not "justifiable" within the meaning of the Mineral Leasing Act, 30 U.S.C. § 188(c) (1970), because it was due to financial and other difficulties not within the contemplation of the Act.

Dolores M. Heggie, 28 IBLA 272 (Dec. 20, 1976)

If the postmark on the rental payment envelope does not demonstrate reasonable diligence in the lessee's mailing of the payment, the Board will not go beyond it in the absence of exceptional circumstances. Substantial evidence will be required to corroborate any allegation to the contrary. A mere reference to a statement indicating that a check in payment of the rent was issued or sent on a certain date is not, by itself, sufficient.

Agnes M. French, 28 IBLA 282 (Dec. 27, 1976)

An oil and gas lease, terminated by operation of law for failure to pay timely the advance rental, will not be reinstated where the sole reason offered as justification for the tardy payment is the confusion and business disruption which attended the remodeling of the corporate lessee's office space. Employee neglect or inadvertence likewise will not serve as jusficiation.

Mono Power Company, 28 IBLA 289 (Dec. 27, 1976)

RENTALS

An oil and gas lease terminated by operation of law for failure to pay timely the advance rental may be reinstated only where the lessee shows that his failure to pay the rental on or prior to the anniversary date was either justifiable or not due to a lack of reasonable diligence. Past adherence to the requirement of timely payment does not justify a subsequent failure to make timely payment. Mailing

OIL AND GAS LEASES--Continued

RENTALS--Continued

a rental payment at Chicago, Illinois, to Salt Lake City, Utah, 1 day before the due date does not constitute reasonable diligence.

Henry Carter, 24 IBLA 70 (Feb. 24, 1976)

Where the advance rental check is received within 20 days after the anniversary date, the Bureau may deposit said check in an "unearned" account in order to preserve the right of the lessee to petition for reinstatement of the terminated lease and to safeguard the check, create a record of the payment, and bring it under accounting control. This does not signify acceptance of the payment, or indicate that the lease has not terminated, or create an estoppel against the government.

John J. Nordhoff, Dean Kirk, 24 IBLA 73 (Feb. 24, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time cannot be reinstated when the petitioner fails to show that the late payment of rental was justifiable or not due to a lack of reasonable diligence. Loss of a checkbook through theft 5 days before the due date for payment does not establish causality sufficient to constitute a justifiable excuse.

John E. Stengel, 24 IBLA 98 (Feb. 25, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely may be reinstated only if the lessee shows by satisfactory evidence that the failure to pay the rental on or before the anniversary date was either justifiable or was not due to a lack of reasonable diligence. Allowing 1 day for the rental payment to reach Billings, Montana, from Eau Claire, Michigan, is not an exercise of reasonable diligence, and inability to pay is not a justifiable reason for failure to make timely payment.

Frank Thompson, 24 IBLA 105 (Mar. 1, 1976)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due.

Where an offer is drawn with first priority in a simultaneous drawing, and the offeror fails to pay the first year's rental timely, his failure to do so cannot be excused because of the asserted delay in the Postal Service.

John Paul Pratt, 24 IBLA 110 (Mar. 1, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated when the lessee shows that its failure to pay the rental on or before the anniversary date was justifiable.

Great Basins Petroleum Co., 24 IBLA 117 (Mar. 1, 1976)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due. An attempt to make payment after the close of office hours on the day the payment is due will not prevent the disqualification.

W. Duane Kennedy, 24 IBLA 152 (Mar. 10, 1976)

The retention of the proceeds from a check, submitted as advance rental during the adjudication of an oil and gas lease offer, does not constitute the creation of a contract.

Robert L. Williams, 24 IBLA 311 (Apr. 20, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated when the lessee shows that his failure to pay the rental on or before the anniversary date was not due to a lack of reasonable diligence.

An oil and gas lease, terminated because the advance rental was received 1 day after the due date, may be reinstated where it is shown that the lessee mailed the rental payment 3 days prior to the due date from the main post office in the same city where the BLM's field office is located and the postal authorities verify that there had been a delay in the processing of the mail at that particular time. Under these circumstances, the lessee will be considered to have mailed the payment with due diligence.

A. Helander, 25 IBLA 54 (May 18, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on or before the anniversary date may be reinstated only upon a showing that the failure to pay on time was either justifiable or not due to lack of reasonable diligence. Inadvertence of the lessee's employee in misplacing the courtesy notice does not justify late payment.

Samuel J. Testagrossa, 25 IBLA 64 (May 28, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time cannot be reinstated when the petitioner fails to show that the late payment was justifiable or not due to a lack of reasonable

OIL AND GAS LEASES--Continued

RENTALS--Continued

diligence. A payment that is late because it was inadvertently sent by the lessee to the wrong address is neither justifiable nor the result of reasonable diligence.

Frank H. Crosby, 25 IBLA 160 (June 14, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated where it is shown that lessee's failure to pay the rental timely was not due to a lack of reasonable diligence. Evidence which establishes that the payment due on Dec. 1, 1975, at the Eastern States Office, Bureau of Land Management, Silver Spring, Maryland, was delivered to a postal carrier on Nov. 11, 1975, is sufficient to demonstrate due diligence despite the fact that the envelope containing the payment was postmarked Dec. 8, 1975, and not received until Dec. 11, 1975, where a credible explanation of the delay has been furnished by the Post Office.

Paul D. Beaird, Jr., and Leon F. Scully, Jr., 26 IBLA 79 (July 13, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on or before the anniversary date may be reinstated only upon a showing that the failure to pay on time was either justifiable or not due to a lack of reasonable diligence. Late payment of the rental is not justified by confusion concerning proper processing of the rental payment which resulted when the duty to make payment was transferred from the company's land manager to its accountant.

Serio Exploration Company, 26 IBLA 106 (July 26, 1976)

Under 30 U.S.C. § 188(c) (1970), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless the rental payment is tendered at the proper office within 20 days of the due date.

Albert DiGiulio, Jr., Genuino J. Grande and Jeremy V. Cohen, 26 IBLA 169 (Aug. 4, 1976)

When an oil and gas lease offeror whose entry card was drawn first in a simultaneous drawing fails to pay the rental within 15 days after receiving notice that payment is due, he is automatically disqualified under 43 CFR 3112.4-1 from receiving the lease.

Frank De Jong, 26 IBLA 327 (Aug. 30, 1976)

Where, by prearrangement, as part of a business negotiation, a third party assumes responsibility for the payment of the annual rentals for two oil and gas leases which subsequently terminate by operation of law when the rental

OIL AND GAS LEASES--Continued

RENTALS--Continued

check is dishonored by the drawee bank, the leases will not be reinstated on the strength of the lessee's naked assertion that the uncollectability of the check was deliberately contrived as part of a scheme to deprive him of the lease so that the third party could be granted the leases unlawfully by a federal employee.

Stanley J. Pirtle, 26 IBLA 348 (Sept. 7, 1976)

Where a noncompetitive oil and gas lease is canceled for failure of the lessee to make full payment of the first year's rental, the Department may return the rental pursuant to the repayment statute, 43 U.S.C. § 1374 (1970), in appropriate circumstances where the lessee has derived no benefit from the possession of the lease and there are no other factors militating against repayment.

Albert J. Finer, 27 IBLA 61 (Sept. 27, 1976)

Where part of the lands in an oil and gas lease are included within the known geologic structure of a producing oil or gas field, the annual rental rate will be increased for all of the land in the lease and a bond required.

H. B. Cahoon Investment Company, John Oakason, 27 IBLA 210 (Oct. 6, 1976)

Where the Bureau of Land Management sends notice to an offeror, pursuant to 43 CFR 3103.3-1, that the first year's rental accompanying an oil and gas lease offer is deficient in the amount of 41 cents, and that the deficiency must be paid within 30 days from notice under penalty of cancellation of the lease, the lease will be canceled where the lessee receives the notice, yet fails to pay.

Zona R. Jackson, 27 IBLA 217 (Oct. 6, 1976)

Where the Bureau of Land Management sends notice to an offeror at his record address, pursuant to 43 CFR 3103.3-1, that the first year's rental accompanying his noncompetitive oil and gas lease offer is deficient and such notice is returned to the Bureau marked "Unclaimed" by the post office, the cancellation of the lease will be set aside and the notice will not be considered to have been served on the offeror, pursuant to 43 CFR 1810.2(b), when the post office has failed to forward the notice in accordance with a request by the offeror to forward all mail and other mail has, in fact, been forwarded.

Jack R. Coombs, 28 IBLA 53 (Nov. 9, 1976)

An offeror is properly disqualified from receiving a noncompetitive oil and gas lease on an offer which is drawn first from a group of simultaneously filed offers when he fails to pay the first year's advance rental within

OIL AND GAS LEASES--Continued

RENTALS--Continued

15 days of his receipt of notice that such rental is due, and the delay is attributable to his posting of the rental check with insufficient postage.

Edgar C. Bennington, Jr., 28 IBLA 65 (Nov. 10, 1976)

Where a lessee makes a deficient rental payment for his oil and gas lease claiming that such payment was determined in accordance with the rental or acreage figure stated in the lease, he will not be entitled to a Notice of Deficiency, pursuant to 43 CFR 3108.2-1, when it is shown that he received notice of an increase in the lease rental and, therefore, was not justified in relying on the original rental figure in the lease.

An oil and gas lease terminated by operation of law for failure to pay the full advance rental timely can only be reinstated when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence.

Lone Star Producing Company, 28 IBLA 132 (Nov. 19, 1976)

Where the BLM deposits the advance rental tendered with the filing of an oil and gas lease offer, that action does not signify acceptance of the offer, nor does it create a contract to lease the land applied for, nor does it give rise to an estoppel against the Government.

Pinnacle Mining and Exploration Company, Inc., 28 IBLA 249 (Dec. 20, 1976)

There is no basis for reinstating an oil and gas lease, terminated for failure to pay rental timely, because of alleged reasonable diligence when the payment was mailed no earlier than the date the rental was due.

An oil and gas lease terminated for failure to pay rental timely may not be reinstated where tifiable" within the meaning of the Mineral Leasing Act, 30 U.S.C. § 188(c) (1970), because it was due to financial and other difficulties not within the contemplation of the Act.

Dolores M. Heggie, 28 IBLA 272 (Dec. 20, 1976)

An oil and gas lease, terminated by operation of law for failure to pay timely the advance rental, will not be reinstated where the sole reason offered as justification for the tardy payment is the confusion and business disruption which attended the remodeling of the corporate lessee's office space. Employee neglect or inadvertence likewise will not serve as justification.

Mono Power Company, 28 IBLA 289 (Dec. 27, 1976)

OIL AND GAS LEASES--Continued

RIGHTS-OF-WAY LEASES

Where a protest against the United States entering into a compensatory royalty agreement pertaining to oil and gas underlying a railroad right-of-way pursuant to the Act of May 21, 1930, 46 Stat. 373, 30 U.S.C. § 301 et seq. (1970), is based upon an assertion that the protestants have title to the oil and gas under the right-of-way, the protest will be properly dismissed if it is found the United States has title to those minerals.

Although the grants of a right-of-way to a railroad under sec. 2 of the Act of July 1, 1862, and of title to odd-numbered sections of land under sec. 3 of that Act were grants in praesenti, the railroad's interest in the right-of-way land stems solely from sec. 2. There is no difference in its interest in portions of the right-of-way land which cross even-numbered sections of land and in portions which cross odd-numbered sections. Minerals underlying the right-of-way were reserved to the United States in both instances.

Title to the oil and gas deposits underlying the right-of-way granted to a railroad by the Act of July 1, 1862, 12 Stat. 489, did not pass under a patent to the land that the right-of-way crosses. Rather, title remains in the United States.

Brown W. Cannon, Jr., et al., 24 IBLA 166 (Mar. 16, 1976) 83 I.D. 80

The Secretary of the Interior does not have authority under the Right-of-Way Oil and Gas Leasing Act of May 21, 1930, 30 U.S.C. § 301 et seq. (1970), to dispose of deposits of oil and gas underlying a railroad right-of-way granted pursuant to the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented under the Act of Apr. 24, 1820, without any reservation for minerals. In such case, title to the mineral estate was included within the grant to the patentee.

It is improper to dismiss a protest against issuance of an oil and gas lease applied for pursuant to the Act of May 21, 1930, 30 U.S.C. § 301 et seq. (1970), for lands underlying a railroad right-of-way granted under the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented without a reservation for minerals. In such case title to the mineral estate underlying the right-of-way is no longer held by the United States and, therefore, a lease issued pursuant to the 1930 Act is void and must be canceled.

Amerada Hess Corporation, 24 IBLA 360 (Apr. 27, 1976) 83 I.D. 194

STIPULATIONS

It is well established that the execution of appropriate special stipulations as a condition precedent to the issuance of oil and gas leases may be required at the discretion of the Secretary of the Interior in order to

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

protect environmental, recreational and other land use values.

While "no surface occupancy" stipulations should be of sufficient efficacy to protect the environment, no lease should issue with stipulations so restrictive that the use of the land for any purpose associated with the production of oil and gas is totally precluded.

The financial burden of complying with protective stipulations in oil and gas leases is the sole responsibility of the lessee.

Bill J. Maddox, 24 IBLA 147 (Mar. 10, 1976)

The financial burden of complying with stipulations included in an oil and gas lease is the sole responsibility of the lessee.

Duncan Miller, 24 IBLA 203 (Mar. 19, 1976)

A decision rejecting an oil and gas lease offer because the State Office wishes to reconsider whether a lease should issue subject to a no surface occupancy stipulation will be set aside and the case remanded for the Bureau of Land Management, in the exercise of its delegated discretion to lease public lands for oil and gas, to determine whether in the light of Chevron Oil Company, 24 IBLA 159 (1976), it wishes to issue a lease subject to a no surface occupancy stipulation, or whether it still wishes to make the subject land not available for leasing at this time, which is within its authority.

Milan S. Papulak, 24 IBLA 278 (Mar. 30, 1976)

The execution of special stipulations as a condition precedent to the issuance of an oil and gas lease may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational and other land use values. In each case the need for the stipulation should be clear and the means to accomplish the intended purpose should be reasonable.

Cartridge Syndicate, 25 IBLA 57 (May 20, 1976)

An applicant for an oil and gas lease may be required to accept stipulations designed for the protection of the land and its resources in the public interest as a condition precedent to issuance of a lease where the stipulation does not unreasonably interfere with the rights conferred by an oil and gas lease. A stipulation requiring lessee, at his own expense, to make an inventory of archaeological and historical sites on those areas of the leased lands which he proposes to enter for purposes of exploration or drilling and to agree to reasonable conditions of use designed to protect any valuable sites or objects disclosed by the inventory is reasonable and will be upheld.

W. E. Haley, 25 IBLA 311 (June 29, 1976)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where a Bureau of Land Management district-wide environmental analysis record establishes the likelihood that significant archaeological values are prevalent in the district may be found in the land embraced by leases in that district, a special protective stipulation is not unreasonable solely because no archaeological values have yet been discovered in the lands in the lease offer.

Oil and gas lessees must bear the expenses occasioned by compliance with stipulations for the protection of the environment and other land use values.

A stipulation requiring an oil and gas lessee to provide a certified statement by an archaeologist concerning the existence of archaeological values on lands to be disturbed by the lessee does not constitute an unlawful delegation of authority because the purpose of the statement is to notify an authorized officer of the Department who retains the authority to determine whether the archaeological data are significant and whether such data are being or may be irrevocably lost or destroyed.

Cecil A. Walker, Alan C. F. Dille', 26 IBLA 71 (July 9, 1976)

The Secretary of the Interior may require execution of special stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of an oil and gas lease. But where a State Office of the Bureau of Land Management seeks to impose a "no surface occupancy" stipulation, the most stringent of stipulations, without showing that it has considered less stringent stipulations, the decisions will be set aside. Where the stated basis for the imposition of the stipulation is the threat of oil and gas activities to automobile racing, the decision will be set aside particularly where the lease offers include land primarily outside the boundaries of the racing grounds withdrawal.

Vern K. Jones, et al., 26 IBLA 165 (Aug. 4, 1976)

Where the transmittal of an appeal to the Board of Land Appeals is accompanied by the request of the State Director that the case be remanded because the special stipulation which accompanied the decision from which the appeal was taken was not the correct one, the case is remanded for further consideration by the Bureau of Land Management, and the Board of Land Appeals does not pass on the reasonableness of either stipulation.

A A Minerals Corp., 27 IBLA 1 (Sept. 17, 1976)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

An applicant for an oil and gas lease may be required to accept stipulations designed for the protection of the land and its resources in the public interest as a condition precedent to issuance of a lease where the stipulation does not unreasonably interfere with the rights conferred by an oil and gas lease. A stipulation requiring lessee, at his own expense, to make an inventory of archaeological and historical sites on those areas of the leased lands which he proposes to enter for purposes of exploration or drilling and to agree to reasonable conditions of use designed to protect any valuable sites or objects disclosed by the inventory is reasonable and will be upheld.

C. C. Hughes, 27 IBLA 38 (Sept. 22, 1976)

Applicants for oil and gas leases may be required to accept a stipulation as reasonable and in the public interest and in accord with national and departmental policy, which stipulation requires lessees to engage the services of a qualified professional archaeologist to conduct a survey of the areas to be disturbed for evidences of archaeological or historic sites or materials with the cost to be borne by the lessees, but such archaeologist is not required to work only under the authority of a current Antiquities Act permit.

General Crude Oil Company, 28 IBLA 214 (Dec. 10, 1976) 83 I.D. 666

TERMINATION

A petition for reinstatement of an oil and gas lease which has expired by operation of law for failure to make payment of the annual rentals on time will be denied where the petition is filed with the appropriate office more than 15 days after receipt of notification of termination of the lease.

Where the advance rental check is received within 20 days after the anniversary date, the Bureau may deposit said check in an "unearned" account in order to preserve the right of the lessee to petition for reinstatement of the terminated lease and to safeguard the check, create a record of the payment, and bring it under accounting control. This does not signify acceptance of the payment, or indicate that the lease has not terminated, or create an estoppel against the government.

John J. Nordhoff, Dean Kirk, 24 IBLA 73 (Feb. 24, 1976)

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated when the lessee shows that its failure to pay the rental on or before the anniversary date was justifiable.

Great Basins Petroleum Co., 24 IBLA 117 (Mar. 1, 1976)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

An oil and gas lease which has terminated by operation of law for failure to pay the annual rental on or before the due date may not be reinstated unless, among other things, payment has been tendered within 20 days of the anniversary date.

Merliyn K. Buxton, C. B. Sharpe, 24 IBLA 269 (Mar. 29, 1976)

Denial of a request for approval of an assignment of an interest in an oil and gas lease is proper where (1) the lease had terminated by operation of law pursuant to 30 U.S.C. § 188(b) (1970) for failure to make timely payment of rental, and where (2) the assignor is a stranger to the lease, and the record is devoid of any assignment from the lessees of record to the assignor.

Albert DiGiulio, Jr., Genuino J. Grande and Jeremy V. Cohen, 26 IBLA 169 (Aug. 4, 1976)

An oil and gas lease which has terminated by operation of law for failure to pay the annual rental on or before the due date may not be reinstated unless, among other things, payment has been tendered at the proper office within 20 days of the anniversary date.

A. E. White, et ux., 28 IBLA 91 (Nov. 12, 1976)

UNIT AND COOPERATIVE AGREEMENTS

"Area covered by unit plan" and "Lands committed and not committed to unit plan." When an oil and gas lease is committed to a cooperative or unit plan of development or operation approved by the Secretary, and when such plan unitizes less than all horizons or depths of said lease, the "area covered" by the plan consists only of the unitized depths or horizons and excludes any depths or horizons not unitized. Such a lease necessarily "embraces lands that are in part within and in part outside of the area covered by such plan" and must be "segregated into separate leases as to the lands committed and the lands not committed." "Lands committed" can only refer to all unitized depths or horizons; "lands not committed" refers to all non-unitized depths. 30 U.S.C. § 226(j). Solicitor's Opinion, M-36776 (May 7, 1969), no longer followed in part.

Amoco Production Company, 24 IBLA 227 (Mar. 24, 1976)

In order to support extension of an oil and gas lease on the basis of production within a pre-existing unit to which the lease was not previously committed, the lessee must reach an agreement with the parties to the unit agreement and the unit operating agreement in accordance with the procedures for subsequent joinder outlined therein and submit evidence

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS--Continued

of such agreement for approval of the Oil and Gas Supervisor, United States Geological Survey, prior to expiration of the lease. The mere sending of notice by the lessee to the Bureau of Land Management announcing his intention to commit his lease to an existing unit agreement is not sufficient.

Duncan Miller, 25 IBLA 125 (June 7, 1976)

WELL CAPABLE OF PRODUCTION

An oil and gas lease will expire by operation of law at the end of its primary term unless oil or gas is being produced in paying quantities at that time or actual drilling operations were commenced prior to the end of the primary term and are being diligently prosecuted, thereby entitling the lessee to an extension of the lease. A once productive well which ceases its productive capability during the initial term will not prevent expiration of the lease.

Rajac Industries, Inc., 26 IBLA 202 (Aug. 11, 1976)

OIL SHALE

WITHDRAWALS

An application for a phosphate prospecting permit is properly rejected when the lands applied for have been classified as containing deposits of oil shale. The lands are thereby subjected to the withdrawal from leasing and other disposal imposed by Executive Order No. 5327. Rejection of the application is required even though the application was filed prior to the oil shale classification and withdrawal.

Thomas E. Gaynor, 24 IBLA 320 (Apr. 20, 1976)

OUTER CONTINENTAL SHELF LANDS ACT
(See also Oil and Gas Leases.)

STATE LEASES

Generally

Leases issued by the State of Texas for offshore oil and gas deposits which have been validated under sec. 6 of the Outer Continental Shelf Lands Act do not prohibit, for royalty purposes, allowance by the Geological Survey of a reasonable deduction of barging transportation costs for crude oil production from the field to the point of the first market onshore.

C & K Petroleum, Inc., 27 IBLA 15 (Sept. 17, 1976)

PATENTS OF PUBLIC LANDS

GENERALLY

An application for patent to school lands in place, pursuant to 43 U.S.C. § 871a (1970), which requests an exclusion of the right-of-way granted under the Act of July 1, 1862, as amended July 2, 1864, must be rejected. Such a patent must be issued "subject to" the right-of-way.

State of Wyoming, 27 IBLA 137 (Sept. 29, 1976)
83 I.D. 364

In the absence of legislation by Congress, a patent from the United States does not convey an implied easement by way of necessity across public land.

Sun Studs, Inc., 27 IBLA 278 (Oct. 26, 1976)
83 I.D. 518

A grantee's failure to develop for an unreasonable period of time (over 19 years) lands patented under the Recreation and Public Purposes Act constitutes a violation of the reversionary clause in the patent which states that if the lands are devoted to a use other than that for which they were conveyed title shall revert to the United States.

Clark County, Nevada, 28 IBLA 210 (Dec. 8, 1976)

AMENDMENTS

An application for the amendment of a patent is properly rejected where the record contains insufficient evidence to show that the entryman entered lands not intended by him as his entry, and where the record fails to show what precaution to avoid error was taken by the entryman at the time of making the original entry, if in fact he intended to enter other lands.

Domenico Tussio, et ux., 24 IBLA 141 (Mar. 8, 1976)

The execution of an application for patent to a mining claim by an attorney in fact for the claimant, at a time when the claimant himself is both resident of and physically within the land district in which the mining claim is located, is unauthorized, and such an application is invalid. The defect cannot be cured by an amendment signed by the claimant.

Floyd R. Bleak, 26 IBLA 378 (Sept. 9, 1976)

EFFECT

The Bureau of Land Management has the authority to impose a stipulation on an oil and gas

PATENTS OF PUBLIC LANDS--Continued

EFFECT--Continued

lease covering reserved minerals on patented lands, which would require archaeological investigation and excavations by lessee.

General Crude Oil Company, 28 IBLA 214 (Dec. 10, 1976) 83 I.D. 666

PHOSPHATE LEASES AND PERMITS

GENERALLY

It is proper to include environmental protection stipulations in a phosphate lease even though the stipulations apply to privately owned surface lands overlying the federally reserved mineral estate under lease or to privately owned lands used in conjunction with the lease.

Cominco American, Inc., 26 IBLA 329 (Sept. 1, 1976)

PERMITS

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

Applications for phosphate prospecting permits are properly rejected by the Bureau of Land Management upon the basis of a determination by the Geological Survey that the lands applied for contain workable deposits of phosphate thus making the lands subject to the leasing provisions rather than the prospecting provisions of the Mineral Leasing Act. A review of the technical data relied upon by the Geological Survey in making its determination is not required where no evidence is submitted on appeal demonstrating error in that determination.

William F. Martin, 24 IBLA 271 (Mar. 30, 1976)

An application for a phosphate prospecting permit is properly rejected when the lands applied for have been classified as containing deposits of oil shale. The lands are thereby subjected to the withdrawal from leasing and other disposal imposed by E.O. No. 5327. Rejection of the application is required even though the application was filed prior to the oil shale classification and withdrawal.

Thomas E. Gaynor, 24 IBLA 320 (Apr. 20, 1976)

When deciding whether issuance of a phosphate prospecting permit is appropriate, the Bureau

PHOSPHATE LEASES AND PERMITS--Continued

PERMITS--Continued

of Land Management is entitled to rely on the reasoned opinion of Geological Survey as its technical expert. A mineral determination made by Geological Survey will not be disturbed in the absence of a clear and definite showing of error. However, when Survey later changes its own determination, the case will be remanded for further consideration.

Philip Shaiman, 25 IBLA 177 (June 14, 1976)

RENTALS

The Bureau of Land Management is authorized by regulation 43 CFR 3524.1-4(a)(2)(i) to impose a reasonable bonus per acre as a condition to modifying a phosphate lease by adding land to it noncompetitively.

Cominco American, Inc., 26 IBLA 329 (Sept. 1, 1976)

PRACTICE BEFORE THE DEPARTMENT
(See also Rules of Practice.)

PERSONS QUALIFIED TO PRACTICE

An individual not otherwise entitled to practice before the Department who is a full-time employee of two affiliated corporations may represent the corporations before the Department on the basis of the regulation (predicated upon statutory authority), which provides that an officer or a full-time employee of a corporation is qualified to practice before the Department on behalf of the corporation with respect to a particular matter.

Final Decision of the Solicitor in the Matter of the Eligibility of Mr. James R. Kyper to Represent Eastern Associated Coal Corporation and Affinity Mining Company Before the Department of the Interior, M-36883 (Feb. 9, 1976) 83 I.D. 131

Qualifications to practice before the Department of the Interior are prescribed by regulations. Where an appeal is brought by a person who does not appear to fall within any of the categories of persons authorized to practice, the appeal is subject to dismissal.

W. Duane Kennedy, 24 IBLA 152 (Mar. 10, 1976)

PRIVACY ACT

Where it does not appear that the notice required by sec. 7(b) of the Privacy Act of 1974 regarding the disclosure of a social security number was given, an oil and gas lease offer on a drawing card filed in a simultaneous drawing procedure should not be considered defective solely because the applicant omitted designating the social

PUBLIC LANDS--Continued

LEASES AND PERMITS--Continued

3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Rilite Aggregate Company, 26 IBLA 197 (Aug. 11, 1976)

RIPARIAN RIGHTS

Title to an island omitted from the original survey but existing at that time in a nonnavigable river remains in the United States and is subject to survey despite the disappearance of the channel separating the island from the lots which were formerly riparian.

R. A. Mikelson, 26 IBLA 1 (July 6, 1976)

The acceptance by a State of other lands as indemnity for lands lying within the meander line of a nonnavigable lake adjacent to the granted upland school section, was a relinquishment of any interest in the adjacent land underlying the lake as an incident to the grant of the school section to the extent such land lies within the linear boundaries of the school section, and precludes the assertion of a State claim to such lands.

State of Montana, 28 IBLA 124 (Nov. 16, 1976)

SPECIAL USE PERMITS

Issuance of special land use permits is discretionary, and it is proper to reject an application for such a permit if the use for which the application is made is inconsistent with the objectives of the Bureau of Land Management and programs for public use of the land.

Donald J. Laughlin, d/b/a Riverside Resort & Casino, 25 IBLA 41 (May 12, 1976)

A petition for reconsideration of a decision of the Board of Land Appeals which affirmed the rejection of a special land use permit application will not result in the modification of the earlier decision where that rejection is based upon rational grounds and is consistent with the objectives of the Bureau of Land Management and programs for public use of the land.

Donald J. Laughlin (d/b/a Riverside Resort & Casino) (On Reconsideration), 26 IBLA 154 (Aug. 2, 1976)

The issuance of a special land use permit by the Bureau of Land Management is discretionary, but the Bureau may not issue a permit when the provisions of existing laws may be invoked by the applicant to provide for the proposed use.

PUBLIC LANDS--Continued

SPECIAL USE PERMITS--Continued

A special land use permit may be issued for land being used in trespass for a limited time during pendency of negotiations seeking to effect a land exchange whereby the land occupied in trespass may be patented.

Alfred Gaiser, 26 IBLA 313 (Aug. 30, 1976)

PUBLIC SALES

GENERALLY

A public sale application, filed pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 43 U.S.C. §§ 1431-1435 (1970), and 43 CFR Part 2785 (1971), embracing lands which the records show to be withdrawn by Public Land Order No. 5490 on Feb. 12, 1975, and withdrawn under the Wild and Scenic Rivers Act on Oct. 2, 1968, is properly rejected.

T. E. Markham, 24 IBLA 5 (Feb. 4, 1976)

Department of the Interior policy requires that, in most circumstances, full value be received by the Government in any sale of public land.

Abraham Epstein, 24 IBLA 195 (Mar. 19, 1976)

The Secretary of the Interior has complete discretion to determine whether the surface of public land reported as valuable for any leasable mineral should be disposed of and a nonmineral application may be allowed only if it is determined by the proper officer with the concurrence of the Director, Geological Survey, that the disposal of the lands under the nonmineral application will not unreasonably interefere with current or contemplated operations under the Mineral Leasing Act.

A determination by the United States Geological Survey that certain lands under a public sale application are valuable for various leasable minerals will not be disturbed in the absence of a clear showing by the applicant that such determination was improperly made.

The Kemmerer Coal Company, 26 IBLA 127 (July 30, 1976)

Where the Bureau of Land Management rejects a public sale application based on a determination by Geological Survey that certain lands encompassed by a public sale application contain workable coal deposits and Geological Survey's conclusion that the exercise of surface rights will unreasonably interfere with operations under the mineral leasing law, the case will be remanded for further consideration when the bare conclusion of the Geological Survey is unsupported by any facts and where there is a lack of evidence in the record to support such conclusion.

Edward H. Swartz, 27 IBLA 308 (Oct. 29, 1976)

PUBLIC SALES--Continued

APPLICATIONS

A public sale application, filed pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 43 U.S.C. §§ 1431-1435 (1970), and 43 CFR Part 2785 (1971), embracing lands which the records show to be withdrawn by Public Land Order No. 5490 on Feb. 12, 1975, and withdrawn under the Wild and Scenic Rivers Act on Oct. 2, 1968, is properly rejected.

T. E. Markham, 24 IBLA 5 (Feb. 4, 1976)

A determination by the United States Geological Survey that certain lands under a public sale application are valuable for various leasable minerals will not be disturbed in the absence of a clear showing by the applicant that such determination was improperly made.

The Kemmerer Coal Company, 26 IBLA 127 (July 30, 1976)

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Edward H. Swartz, 27 IBLA 308 (Oct. 29, 1976)

PREFERENCE RIGHTS

An assertion of a preference right to purchase public land offered for public sale pursuant to the Unintentional Trespass Act of Sept. 26, 1968 (43 U.S.C. §§ 1431-1435 (1970)), is properly rejected when the applicant fails to submit satisfactory evidence of his ownership of contiguous lands within the time specified by the authorized officer as provided by regulation.

Yose Cattle Co., 24 IBLA 347 (Apr. 23, 1976)

SALES UNDER SPECIAL STATUTES

A public sale application, filed pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 43 U.S.C. §§ 1431-1435 (1970), and 43 CFR Part 2785 (1971), embracing lands which the records show to be withdrawn by Public Land Order No. 5490 on Feb. 12, 1975, and withdrawn under the Wild and Scenic Rivers Act on Oct. 2, 1968, is properly rejected.

T. E. Markham, 24 IBLA 5 (Feb. 4, 1976)

PUBLIC SALES--Continued

SALES UNDER SPECIAL STATUTES--Continued

An assertion of a preference right to purchase public land offered for public sale pursuant to the Unintentional Trespass Act of Sept. 26, 1968 (43 U.S.C. §§ 1431-1435 (1970)), is properly rejected when the applicant fails to submit satisfactory evidence of his ownership of contiguous lands within the time specified by the authorized officer as provided by regulation.

Yose Cattle Co., 24 IBLA 347 (Apr. 23, 1976)

RAILROAD GRANT LANDS

Legal title, although not record title, to granted lands passes to a railroad under a railroad land grant act upon the filing of a map of definite location of the railroad and such title is subject to divestiture by adverse possession under state laws prior to the issuance of patent to the granted lands.

Where land within the primary limits of a railroad land grant is excluded or reserved by the terms of the granting act, the adverse possession of one who asserts only that he has satisfied the statute of limitations of a particular State will not divest the United States of its title or invest the adverse possessor with any interest in the land.

Where land within the primary limits of a railroad land grant is not excluded or reserved by the terms of the granting act, the statute operates to vest title in the railroad at the time the railroad qualifies to receive it. It is a grant in praesenti, regardless of whether the United States has issued its patent or certificate.

Lands known to be mineral in character (except for coal or iron) at the time of definite location of a railroad are excluded from the grant of place lands to the railroad even though the lands may later lose their mineral character.

The period for determination by the Department of the Interior whether public land included within the primary limits of a legislative grant-in-aid of the construction of a railroad which excepts mineral land is mineral in character extends to the time of issuance of patent to the railroad company.

Where the purchaser from the railroad of unpatented land believed at the time of his purchase that the land was mineral, and there was physical evidence of its mineral character, or if conditions were such that the purchaser should have known then that the land was excepted from the grant to the railroad, he was not a purchaser in good faith within the "innocent purchaser" proviso of sec. 321(b) of the Transportation Act of 1940.

When the Department of the Interior finds that public land within the place limits of a legislative grant-in-aid of the construction of a railroad was mineral in character and the railroad company challenges such finding, a hearing should be granted at which the Department has the obligation of making a prima facie case of mineral character, whereupon the company has

RAILROAD GRANT LANDS--Continued

the burden of establishing nonmineral character by a preponderance of the evidence.

Southern Pacific Transportation Co., Jay R. Fogal: Lloyd D. Hayes (Intervenor), 23 IBLA 232 (Jan. 9, 1976) 83 I.D. 1

Although the grants of a right-of-way to a railroad under sec. 2 of the Act of July 1, 1862, and of title to odd-numbered sections of land under sec. 3 of that Act were grants in prasenti, the railroad's interest in the right-of-way land stems solely from sec. 2. There is no difference in its interest in portions of the right-of-way land which cross even-numbered sections of land and in portions which cross odd-numbered sections. Minerals underlying the right-of-way were reserved to the United States in both instances.

Brown W. Cannon, Jr., et al., 24 IBLA 166 (Mar. 16, 1976) 83 I.D. 80

The Secretary of the Interior does not have authority under the Right-of-Way Oil and Gas Leasing Act of May 21, 1930, 30 U.S.C. § 301 et seq. (1970), to dispose of deposits of oil and gas underlying a railroad right-of-way granted pursuant to the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented under the Act of Apr. 24, 1820, without any reservation for minerals. In such case, title to the mineral estate was included within the grant to the patentee.

Amerada Hess Corporation, 24 IBLA 360 (Apr. 27, 1976) 83 I.D. 194

A railroad right-of-way, granted under the Act of July 1, 1862, 12 Stat. 489, as amended, by Act of July 2, 1864, 13 Stat. 356, crossing a school section, does not constitute lands "otherwise disposed of by the United States" within the ambit of the school indemnity statutes. Therefore a rejection of an indemnity selection application, offering such base, is proper.

State of Wyoming, 27 IBLA 137 (Sept. 29, 1976) 83 I.D. 364

RECLAMATION LANDS

GENERALLY

An application to make homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

No person shall be permitted to make homestead entry or settle upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage per entry and publicly announced the availability of water for irrigation.

Lewis M. Eslick, 24 IBLA 237 (Mar. 24, 1976)

RECLAMATION LANDS--Continued

GENERALLY--Continued

The rejection of an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), to open lands in a reclamation withdrawal to mineral location will be affirmed when the applicant fails to submit facts to show the basis for his knowledge or belief that the lands contain valuable mineral deposits. Merely to state the lands contain such deposits is not sufficient.

Joe Ashburn, 27 IBLA 227 (Oct. 12, 1976)

RECREATION AND PUBLIC PURPOSES ACT

A grantee's failure to develop for an unreasonable period of time (over 19 years) lands patented under the Recreation and Public Purposes Act constitutes a violation of the reversionary clause in the patent which states that if the lands are devoted to a use other than that for which they were conveyed title shall revert to the United States.

Clark County, Nevada, 28 IBLA 210 (Dec. 8, 1976)

REGULATIONS
(See also Administrative Procedure.)

GENERALLY

Even if it be established that a controlling regulation had been violated in previous cases, such violation does not afford a valid predicate for further violations of the regulation.

Mary Nan Spear, 25 IBLA 34 (May 5, 1976)

Where the Bureau of Land Management ordered on Mar. 26, 1975, that unofficial copies of the simultaneous oil and gas lease entry card were invalid and to be rejected, that order will be given prospective application only and will not be applied retroactively to simultaneous entry cards filed during the Jan. 1975 simultaneous filing period.

Eve Reese, 25 IBLA 244 (June 22, 1976)

Simultaneous oil and gas entry cards which are sent to the wrong State Office are not considered filed in the "proper office" within the meaning of 43 CFR 1821.2-2(f), and such State Office has no jurisdiction over entry cards pursuant to 43 CFR 1821.2-1(c); therefore, the filing fees for such offers should not be retained.

James H. Scott, 25 IBLA 384 (July 6, 1976)

It is proper to afford a geothermal lease applicant the benefit of a regulation, adopted after the filing of his application, absent the impairment of third party rights and

REGULATIONS--Continued

GENERALLY--Continued

adverse impact on the interests of the United States. Where a geothermal lease regulation requires the filing of a compliance bond as a condition precedent to issuance of a lease, and that regulation is amended during the pendency of an application to require such a bond only as a condition precedent to entry on the leased lands, the holder of the application may be granted a lease under the amended requirement, if all else be regular.

Christopher A. Marks, 26 IBLA 84 (July 19, 1976)

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Rilite Aggregate Company, 26 IBLA 197 (Aug. 11, 1976)

Even assuming that a BLM order has the force and effect of a regulation, it cannot be applied retroactively where there are intervening rights or the interests of the United States would be adversely affected. Where there is a no. 2 oil and gas drawing card, it constitutes an intervening right.

Beverly J. Steinbeck, 27 IBLA 249 (Oct. 18, 1976)

APPLICABILITY

To the extent they do not vitiate the purposes or provisions of the Alaska Native townsite law, the provisions of the non-Native Alaska townsite law are to be applied in the disposition of Native townsite lands; in such cases, references to the Act of Mar. 3, 1891, 43 U.S.C. § 732 (1970), in the documents relating to a Native townsite are not pro forma, and the non-Native townsite provisions may be applied.

City of Klawock v. P. H. Andrew, et al. City of Klawock v. State of Alaska, Department of Highways, 24 IBLA 85 (Feb. 25, 1976) 83 I.D. 47

A district manager's failure to hold an Advisory Board meeting on a grazing applicant's protest is mooted by a subsequent regulatory amendment terminating graziers' rights to an Advisory Board meeting on protests. In any event, the case would not be remanded for such a meeting when there is no prejudice because the applicant is foreclosed by the grazing regulations from the possibility of prevailing on his protest.

Phil J. Hillberry, 24 IBLA 283 (Mar. 31, 1976)

REGULATIONS--Continued

APPLICABILITY--Continued

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed state application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the Bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia D. Ellis, 24 IBLA 387 (May 3, 1976)

To the extent that the provisions of the non-Native townsite law do not vitiate the purposes of provisions of the Alaska Native townsite law, the provisions of the non-Native townsite law are to be applied in the disposition of Native townsite lands.

Leona R. Strang, 26 IBLA 144 (Aug. 2, 1976)

Even assuming that a BLM order has the force and effect of a regulation, it cannot be applied retroactively where there are intervening rights or the interests of the United States would be adversely affected. Where there is a no. 2 oil and gas drawing card, it constitutes an intervening right.

Beverly J. Steinbeck, 27 IBLA 249 (Oct. 18, 1976)

Where a regulation is amended in a way that benefits an applicant, the Department may, in the absence of intervening rights of third parties or prejudice to the interests of the United States, apply the amendment to pending cases.

Duncan Miller, 28 IBLA 292 (Dec. 27, 1976)

FORCE AND EFFECT AS LAW

In the absence of pertinent statutory directives or regulatory criteria mandating such action, it is improper for the Bureau of Land Management to reject applications filed by a state under the Act of Mar. 15, 1910, for temporary withdrawals of lands for proposed development under the Carey Act, on the basis of the Bureau's determination that the Carey Act does not permit acceptance of a temporary withdrawal application: (1) for the establishment of residence and settlement on noncontiguous tracts of land; (2) if the acreage applied for, when added to desert land entry acreage previously patented to the state's Carey Act project proposer, exceeds the maximum 320 acres permitted to be acquired by one

REGULATIONS--Continued

FORCE AND EFFECT AS LAW--Continued

person under 43 U.S.C. § 212 (1970); and (3) when the preliminary plan of development submitted by the state fails to provide adequate assurance of water transmission to the proposed project. Under these circumstances, the Bureau should suspend action on the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 24 IBLA 314 (Apr. 20, 1976)

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed state application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the Bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia D. Ellis, 24 IBLA 387 (May 3, 1976)

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a state under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 25 IBLA 27 (May 5, 1976)

Idaho Department of Water Resources, 27 IBLA 303 (Oct. 26, 1976)

INTERPRETATION

It is proper to afford a geothermal lease applicant the benefit of a regulation, adopted after the filing of his application, absent the impairment of third party rights and adverse impact on the interests of the United States. Where a geothermal lease regulation requires the filing of a compliance bond as a condition precedent to issuance of a lease, and that regulation is amended during the pendency of an application to require such a bond only as a condition precedent to entry on the leased lands, the holder of the

REGULATIONS--Continued

INTERPRETATION--Continued

application may be granted a lease under the amended requirement, if all else be regular.

Christopher A. Marks, 26 IBLA 84 (July 19, 1976)

WAIVER

Even if it be established that a controlling regulation had been violated in previous cases, such violation does not afford a valid predicate for further violations of the regulation.

Mary Nan Spear, 25 IBLA 34 (May 5, 1976)

A noncompetitive oil and gas lease applicant's failure to submit the statement of interest of the other parties in interest to the offer is not excused, nor is the Department estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease to the applicant on an offer which was deficient for the same reason.

Leon M. Flanagan, et al., 25 IBLA 269 (June 24, 1976)

The requirement that a bidder in a competitive oil and gas lease sale must submit one-fifth of the amount bid with his bid is mandatory and will not be waived.

Sarkeys, Inc., 26 IBLA 141 (Aug. 2, 1976)

Even if it be established that the Department had not applied in other cases regulation 43 CFR 4115.2-1(e)(8), which requires termination of grazing privileges upon loss of ownership or control of base property, such failure to apply the regulation is not authority to further disregard the regulation.

Prior recognition of grazing privileges based on licensee's erroneous statement of ownership of base property does not estop the Department from canceling the privileges when it becomes aware of the facts.

Charles Stewart, 26 IBLA 160 (Aug. 4, 1976)

REINSTATEMENT

GENERALLY

A lessee who is out of town on vacation on the lease anniversary date and who mails the lease rental payment 6 days after the due date is not reasonably diligent.

Extenuating circumstances outside the control of the lessee occurring near the anniversary date of the lease may constitute justifiable cause for a late rental payment where the circumstances are the proximate cause of the failure to make timely payment. However,

REINSTATEMENT--Continued

GENERALLY--Continued

where appellant has delayed payment until just before the due date and has entrusted the function to an agent whose subagent neglects to make payment timely, the lack of diligence on the part of the lessee and/or his agent and/or subagent, and not the adverse circumstances confronting appellant's agent, constitute the proximate cause of the late payment and a decision denying reinstatement will be affirmed.

Lucille Lipphardt, 24 IBLA 81 (Feb. 25, 1976)

A petition for reinstatement of an oil and gas lease terminated for lack of timely payment of the rental is properly denied where the appellant does not show reasonable diligence in mailing the payment or a justifiable excuse for the delay in payment. The inadvertence or negligence of the appellant's employee does not justify late payment of the rental.

The fact that the courtesy rental notice did not come to appellant's attention until 6 days after the rental due date is not a justifiable excuse for late payment of the rental.

James Donoghue, 25 IBLA 280 (June 25, 1976)

RES JUDICATA

A judgment is not conclusive of a fact erroneously assumed when the fact was not actually litigated and determination thereof was not essential to the decision.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

A civil action in a federal district court condemning a mining claim for a period of years for the exclusive use of the United States does not bar a subsequent contest by the Department of the Interior challenging the validity of the claim.

United States v. The American Fluorspar Group, Inc., 25 IBLA 136 (June 7, 1976)

A federal district court jury verdict in a suit to cancel desert land patents, that the entrymen and their purchaser under an illegal executory contract did not commit fraud against the United States, does not collaterally estop this Department from adjudicating a contest grounded on the illegal executory contract against the purchaser's own entry, because the legal standard applicable in the subsequent contest is different than that in the fraud action--a desert land entry can be subject to cancellation for acts that do not constitute fraud.

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976) 83 I.D. 280

RES JUDICATA--Continued

Where a decision by an officer of the Department has become final, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and same issues, absent compelling legal or equitable reasons for reconsideration.

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

While the Department of the Interior does not rigidly apply the doctrine of administrative finality so as to bar any subsequent reassertion of soldier's additional homestead scrip rights which have been determined to be invalid, it is incumbent upon an applicant seeking to exercise such rights to submit compelling legal or equitable reasons for reconsideration.

Where an applicant seeks to assert a soldier's additional homestead right which has been determined to be invalid in an earlier proceeding, and does not submit compelling legal or equitable reasons for reconsideration, but merely seeks to reargue the previous determination, the attempted exercise of soldier's additional homestead rights will be rejected.

George Rodda, Jr., 27 IBLA 186 (Oct. 4, 1976)

RIGHTS-OF-WAY

(See also Indian Lands, Outer Continental Shelf Lands Act, Reclamation Lands.)

GENERALLY

Where a protest against the United States entering into a compensatory royalty agreement pertaining to oil and gas underlying a railroad right-of-way pursuant to the Act of May 21, 1930, 46 Stat. 373, 30 U.S.C. § 301 et seq. (1970), is based upon an assertion that the protestants have title to the oil and gas under the right-of-way, the protest will be properly dismissed if it is found the United States has title to those minerals.

Brown W. Cannon, Jr., et al., 24 IBLA 166 (Mar. 16, 1976) 83 I.D. 80

Improvement of land by a road, and use of the land for access to a private inholding do not by themselves qualify the locator to purchase the land as a trade and manufacturing site.

Evelyn M. Bunch, 25 IBLA 44 (May 13, 1976)

The Act of July 26, 1866, R.S. 2477, 43 U.S.C. § 932 (1970), grants a right-of-way for the construction of highways over public lands not reserved for public uses. Where the Bureau of Land Management closes a 400-foot haul road, formerly part of a right-of-way issued to the Oregon State Highway Department of Oregon and California revested land for a material site, without considering the implications of the statute, and appellant

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

submits evidence showing that the road has been used by the public for many years, the decision will be set aside and the case will be remanded for a determination of whether a highway has already been established under the statute or, if not, to afford appellant an opportunity to file an application for a right-of-way under 43 CFR 2822.1-2.

Homer D. Meeds, 26 IBLA 281 (Aug 26, 1976)
83 I.D. 315

In the absence of legislation by Congress, a patent from the United States does not convey an implied easement by way of necessity across public land.

In order to establish an easement by way of necessity, the requisite necessity must exist at the time of the conveyance. Moreover, if the necessity ceases to exist, the easement also ceases to exist. When other means of access are available, even though less convenient, a way of necessity will not be recognized or the implication becomes subject to control of other circumstances.

Sun Studs, Inc., 27 IBLA 278 (Oct. 26, 1976)
83 I.D. 518

ACT OF MARCH 3, 1875

The Secretary of the Interior does not have authority under the Right-of-Way Oil and Gas Leasing Act of May 21, 1930, 30 U.S.C. § 301 et seq. (1970), to dispose of deposits of oil and gas underlying a railroad right-of-way granted pursuant to the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented under the Act of Apr. 24, 1820, without any reservation for minerals. In such case, title to the mineral estate was included within the grant to the patentee.

Amerada Hess Corporation, 24 IBLA 360 (Apr. 27, 1976)
83 I.D. 194

ACT OF MARCH 3, 1891

The Department of the Interior may condition approval of right-of-way applications filed pursuant to the Act of Mar. 3, 1891, by requiring acceptance of conditions for the protection of the public interest so long as such conditions are neither inconsistent with nor tend to unreasonably burden the proposed right-of-way projects.

Grindstone Butte Project, 24 IBLA 49 (Feb. 23, 1976)

ACT OF JANUARY 21, 1895

A decision by the Bureau of Land Management rejecting a logging road right-of-way application

RIGHTS-OF-WAY--Continued

ACT OF JANUARY 21, 1895--Continued

as not in the public interest will be affirmed in the absence of sufficient reasons to the contrary.

Sun Studs, Inc., 27 IBLA 278 (Oct. 26, 1976)
83 I.D. 518

ACT OF FEBRUARY 15, 1901

It is not necessary to reject an application filed pursuant to the Act of Feb. 15, 1901, for a right-of-way in an area adjacent to but outside of the boundaries of an area designated as a potential addition to the Wild and Scenic Rivers System, unless it is determined that the project would invade the area or diminish the scenic, recreational, and fish and wildlife values present within the potential wild, scenic, or recreational river area, or there are other justifiable grounds for rejection.

Van Rietmann, 25 IBLA 171 (June 14, 1976)

A decision of the Bureau of Land Management, made in the exercise of its discretion, to reject a right-of-way application pursuant to the Act of Feb. 15, 1901, will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown.

Jack M. Vaughan, Judith L. Vaughan, 25 IBLA 303 (June 28, 1976)

A right-of-way granted pursuant to the Act of Feb. 15, 1901, may, in the discretion of the Secretary of the Interior, be canceled for either abandonment or nonuse; the holder of the right-of-way may be required to restore the area.

H. L. Townsend, 26 IBLA 175 (Aug. 6, 1976)

Under 43 CFR 2802.1-7(e), which provides that charges for a right-of-way on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Paradise Oil, Water and Land Development, Inc., 26 IBLA 374 (Sept. 8, 1976)

ACT OF MARCH 4, 1911

Under 43 CFR 2802.1-7(e), which provides that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

RIGHTS-OF-WAY--Continued

ACT OF MARCH 4, 1911--Continued

Following a hearing under 43 CFR 2802.1-7, a decision increasing the charges for use and occupancy of a communication site is in error to the extent that the decision is based upon unspecified evidence not in the record and not made known to the user, and the decision must be set aside.

Under 602 DM 1.3, standards for evaluating easements granted by the Department are set forth in Interagency Land Acquisition Conference, Uniform Appraisal Standards for Federal Land Acquisitions.

"Fair market value." As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

A comparable lease method of appraisal of microwave communication sites, which involves the comparison of comparable rental data from other leased sites with data from the subject site, is a proper method of determining the fair market value of such site where there is sufficient comparable data available.

Under 43 CFR 2802.1-7(e), a revision of charges for use and occupancy of a microwave communication site should be based upon the physical condition of the right-of-way at the time the user properly commenced occupancy of the site or at time of grant thereof, whichever was earlier, with value adjusted to present value in that condition.

"Highest and best use." As to the improver of a communication site during the term of his grant, a determination that the highest and best use of property is for communications purposes must be based on evidence showing it is so reasonably likely the site would be chosen for use as a communication site in the absence of improvements made by the improver that the suitability of the land for communications purposes would affect its general market value.

"Before and after rule." In reappraisal of a communication site, the before and after rule is applied by determining the market value of the government tract including the site at the time of reappraisal, excluding any enhancement to or diminution from the site project, and subtracting therefrom the market value of the remaining government property interest, including enhancement or diminution from the project.

In the absence of better evidence of comparable leases, the "before and after" method should be employed in appraisals of communication sites under 43 CFR 2802.1-7.

In a case where a substantial increase is proposed in charges for a communication site under 43 CFR 2802.1-7(e), the required hearing should be conducted in accordance with the accepted concepts of due process.

American Telephone and Telegraph Company, et al., 25 IBLA 341 (June 30, 1976)

RIGHTS-OF-WAY--Continued

ACT OF MARCH 4, 1911--Continued

Under 43 U.S.C. § 961 (1970) and 43 CFR 2802.1-7(a), an applicant has no right to a hearing in connection with original charges for use and occupancy of a communication site, and a hearing pursuant to a request under 43 CFR 4.415 will not be granted where applicant fails to make specific allegations or offer specific proof to show in what factors a Departmental appraisal is in error.

Without convincing evidence that charges prescribed under 43 U.S.C. § 961 (1970) and 43 CFR 2802.1-7 for use and occupancy of a communication site are excessive, charges properly prescribed by an authorized officer will be sustained on appeal.

Departmental regulation 43 CFR 2802.1-7 contemplates that a charge will be initially established for the entire term of the grant of a communication site right-of-way.

Mountain States Telephone and Telegraph Company, 26 IBLA 393 (Sept. 16, 1976) 83 I.D. 332

APPLICATIONS

A Bureau of Land Management decision rejecting an application under the Act of Feb. 15, 1901, for a domestic water pipeline right-of-way will be sustained where it was made in due regard for the public interest.

Hazel E. Kincaid, 25 IBLA 257 (June 23, 1976)

A decision of the Bureau of Land Management, made in the exercise of its discretion, to reject a right-of-way application pursuant to the Act of Feb. 15, 1901, will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown.

Jack M. Vaughan, Judith L. Vaughan, 25 IBLA 303 (June 28, 1976)

The Act of July 26, 1866, R.S. 2477, 43 U.S.C. § 932 (1970), grants a right-of-way for the construction of highways over public lands not reserved for public uses. Where the Bureau of Land Management closes a 400-foot haul road, formerly part of a right-of-way issued to the Oregon State Highway Department on Oregon and California revested land for a material site, without considering the implications of the statutue, and appellant submits evidence showing that the road has been used by the public for many years, the decision will be set aside and the case will be remanded for a determination of whether a highway has already been established under the statutue or, if not, to afford appellant an opportunity to file an application for a right-of-way under 43 CFR 2822.1-2.

Homer D. Meeds, 26 IBLA 281 (Aug. 26, 1976) 83 I.D. 315

RIGHTS-OF-WAY--Continued

APPLICATIONS--Continued

A decision by the Bureau of Land Management rejecting a logging road right-of-way application as not in the public interest will be affirmed in the absence of sufficient reasons to the contrary.

Sun Studs, Inc., 27 IBLA 278 (Oct. 26, 1976) 83 I.D. 518

CANCELLATION

A right-of-way granted pursuant to the Act of Feb. 15, 1901, may, in the discretion of the Secretary of the Interior, be canceled for either abandonment of nonuse; the holder of the right-of-way may be required to restore the area.

H. L. Townsend, 26 IBLA 175 (Aug. 6, 1976)

CONDITIONS AND LIMITATIONS

The Department of the Interior may condition approval of right-of-way applications filed pursuant to the Act of Mar. 3, 1891, by requiring acceptance of conditions for the protection of the public interest so long as such conditions are neither inconsistent with nor tend to unreasonably burden the proposed right-of-way projects.

Grindstone Butte Project, 24 IBLA 49 (Feb. 23, 1976)

NATURE OF INTEREST GRANTED

Although the grants of a right-of-way to a railroad under sec. 2 of the Act of July 1, 1862, and of title to odd-numbered sections of land under sec. 3 of that Act were grants in praesenti, the railroad's interest in the right-of-way land stems solely from sec. 2. There is no difference in its interest in portions of the right-of-way land which cross even-numbered sections of land and in portions which cross odd-numbered sections. Minerals underlying the right-of-way were reserved to the United States in both instances.

Title to the oil and gas deposits underlying the right-of-way granted to a railroad by the Act of July 1, 1862, 12 Stat. 489, did not pass under a patent to the land that the right-of-way crosses. Rather, title remains in the United States.

Brown W. Cannon, Jr., et al., 24 IBLA 166 (Mar. 16, 1976) 83 I.D. 80

The Secretary of the Interior does not have authority under the Right-of-Way and Gas Leasing Act of May 21, 1930, 30 U.S.C. § 301 et seq. (1970), to dispose of deposits of oil and gas underlying a railroad right-of-way granted

RIGHTS-OF-WAY--Continued

NATURE OF INTEREST GRANTED--Continued

pursuant to the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented under the Act of Apr. 24, 1820, without any reservation for minerals. In such case, title to the mineral estate was included within the grant to the patentee.

Amerada Hess Corporation, 24 IBLA 360 (Apr. 27, 1976) 83 I.D. 194

RULE OF APPROXIMATION

The special rule of approximation for geothermal lease offers is applied by subtracting from the total acreage of the offer the acreage of the irregular subdivision which caused the excess acreage. Where a geothermal lease offer describes four complete sections and the area embraced in the application exceeds the acreage limit because one or more of the sections is irregular, the offer may be considered if deletion of the irregular section (or one of them if there is more than one) would cause an acreage deficiency (acreage limit less acreage described in the offer) greater than the excess acreage resulting from inclusion of the section.

Nelson B. Hunt, 27 IBLA 365 (Nov. 4, 1976)

RULES OF PRACTICE

(See also Appeals, Contests and Protests, Contracts, Federal Coal Mine Health and Safety Act of 1969, Hearings, Indian Probate, Practice Before the Department.)

GENERALLY

A stipulation as to procedure only involving two appeals arising under the same contract is disregarded where following the submission of simultaneous briefs under a cross motions for summary judgment procedure, the Board finds some of the terms of the stipulation in which it had acquiesced to be at variance with the rule in the Court of Claims against the splitting of the cause of action under a single and indivisible contract and that adherence to the stipulation could be prejudicial to the contractor in certain foreseeable circumstances. The stay of proceedings provided for by the stipulation with respect to one appeal is therefore vacated and as a corollary to such action the appellant is directed to file its complaint.

Finding that it has inherent discretion to order consolidation of appeals in appropriate cases, the Board orders the consolidation of two appeals which the appellant has asserted involve common questions of law and fact and which, in any event, arose under the same contract, involve the same attorneys and, presumably, the same witnesses.

Appeals of Armstrong & Armstrong, Inc., IBCA-1061-3-75 and IBCA-1072-7-75 (Apr. 7, 1976) 83 I.D. 148

RULES OF PRACTICE--Continued

GENERALLY--Continued

Where it appears that the Bureau of Land Management determined the status of land without considering the effect of conflicting surveys and maps, and where there is insufficient data in the case file for this Board to resolve the conflicts the decision will be remanded to the Bureau for reconsideration in light of those conflicts.

Beverly Trull, 25 IBLA 157 (June 10, 1976)

Where an attorney files an answer to a contest concerning mining claims on behalf of certain individuals, who, during the pendency of the contest proceedings, transfer their interests in the mining claims to a corporation of which they are major stockholders and Directors, and the attorney represents those individuals and the corporation at the contest hearing, the corporation is bound by the determination reached therein, even though the corporation may not have received actual notice of the contest.

Service of a document upon a person's attorney of record constitutes effective service upon such person.

United States v. Mine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

A document which is sent by the Bureau of Land Management to an oil and gas lessee by certified mail is considered to be served upon the lessee when a receptionist in lessee's office signs the return receipt card, and the lessee will be charged with notice as of that date as to the contents of such document.

Lone Star Producing Company, 28 IBLA 132 (Nov. 19, 1976)

APPEALS

Generally

Where the record of a Native allotment application at the time of adjudication shows that rejection would be proper, appellant will not be allowed on appeal to submit data which might warrant a different result, absent a clear and convincing showing explaining why the information was not afforded to the Bureau of Land Management when appellant was called upon for such data.

David E. Stevens, 23 IBLA 221 (Jan. 8, 1976)

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from rejection of a Native allotment satisfactory to it why the evidence was not submitted to the BLM within the 60-day period afforded the applicant to submit a further evidence in support of his application. General, rather than specific, allegations of difficulties in travel

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

and communicating in Alaska are not satisfactory showings of the reason for late filing of such evidence.

Linda L. Walker, 23 IBLA 299 (Jan. 14, 1976)

Where a desert land applicant appeals from a decision of the BLM holding his application incomplete and, therefore, without priority of filing as against a subsequent application, which was allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for final action on the respective applications so as to avoid premature, piecemeal adjudication.

Nelda E. McAndrew, 24 IBLA 205 (Mar. 22, 1976)

The Board of Land Appeals may entertain and, where appropriate, grant a motion by the BLM to remand a case to it for further consideration on the question of whether an environmental impact statement must be filed, even though an appellant, who has protested against a negative declaration that no impact statement is required, objects to the remand.

Harold Gillis, 24 IBLA 248 (Mar. 25, 1976)

A district manager's failure to hold an Advisory Board meeting on a grazing applicant's protest is mooted by a subsequent regulatory amendment terminating graziers' rights to an Advisory Board meeting on protests. In any event, the case would not be remanded for such a meeting when there is no prejudice because the applicant is foreclosed by the grazing regulation from the possibility prevailing on his protests.

Phil J. Hillberry, 24 IBLA 283 (Mar. 31, 1976)

A stipulation as to procedure only involving two appeals arising under the same contract is disregarded where following the submission of simultaneous briefs under a cross motions for summary judgment procedure, the Board finds some of the terms of the stipulation in which it had acquiesced to be at variance with the rule in the Court of Claims against the splitting of the cause of action under a single and indivisible contract and that adherence to the stipulation could be prejudicial to the contractor in certain foreseeable circumstances. The stay of proceedings provided for by the stipulation with respect to one appeal is therefore vacated and as a corollary to such action the appellant is directed to file its complaint.

Finding that it has inherent discretion to order consolidation of appeals in appropriate cases, the Board orders the consolidation of two appeals which the appellant has asserted involve common questions of law and fact and which, in

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

any event, arose under the same contract, involve the same attorneys and, presumably, the same witnesses.

Appeals of Armstrong & Armstrong, Inc., IBCA-1061-3-75 and IBCA-1072-7-75 (Apr. 7, 1976) 83 I.D. 148

Upon appeal from a decision of an Administrative Law Judge, the Board of Land Appeals may make all findings of fact and conclusions of law based upon the record just as though it were making the decision in the first instance.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976) 83 I.D. 185

Where an issue which gives rise to an appeal is mooted during the pendency of the appeal, the appeal will not be dismissed where the priority of the application is dependent upon the correctness of the original decision.

Caroline L. Hunt, 26 IBLA 218 (Aug. 17, 1976)

Where a decision by an officer of the Department has become final, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and same issues, absent compelling legal or equitable reasons for reconsideration.

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

Since the Bureau of Land Management has no authority to issue a public land order withdrawing land, such authority existing only in the Secretary, the Under Secretary and the Assistant Secretaries of the Department of the Interior, recommendations by officers of the Bureau of Land Management relating to withdrawals are not subject to review under the provisions of 43 CFR 4.450-2 or 43 CFR 4.410.

City of Kotzebue, 26 IBLA 264 (Aug. 20, 1976) 83 I.D. 313

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant is not sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a United States interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Jean Oakason, 27 IBLA 41 (Sept. 22, 1976)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

While the Department of the Interior does not rigidly apply the doctrine of administrative finality so as to bar any subsequent reassertion of soldier's additional homestead scrip rights which have been determined to be invalid, it is incumbent upon an applicant seeking to exercise such rights to submit compelling legal or equitable reasons for reconsideration.

George Rodda, Jr., 27 IBLA 186 (Oct. 4, 1976)

Burden of Proof

A determination by a District Manager of the grazing capacity of lands offered for a sec. 15 grazing lease will not be overturned in the absence of a clear showing of error. The burden of proof is upon the party challenging such determination to show that the decision is erroneous or that he has not been dealt with fairly.

Kaser Brothers, 24 IBLA 265 (Mar. 29, 1976)

A claim for a longer time extension under a construction contract due to unusually severe weather is denied where the contracting officer obtained the local climatological data and after reviewing the data granted a time extension when appellant failed to dispute the data or offer any evidence to support its claim for a longer period.

Appeal of David M. Cox, Inc., IBCA-1079-10-75 (Apr. 7, 1976)

Under a contract requiring the use of grout the Board denies a contractor's claim where it finds the terms of the specifications dispositive of the question presented.

Appeal of Whalen & Company, IBCA-1066-3-75 (May 26, 1976)

Dismissal

An appeal by a concessionaire at a wildlife refuge who alleges that Government harassment of the public, failure to repair roads and other actions resulted in a decrease of business and who seeks therefor to be relieved of payment of a semi-annual franchise fee of 3 percent of gross receipts required under the concession agreement and given the right to sell beer, inter alia, is dismissed for lack of jurisdiction, since the agreement contains no adjustment provisions and the relief requested entails reformation of the agreement, but is remanded to the contracting officer, who has wide discretion under the agreement to provide

APPEALS--Continued

Dismissal--Continued

relief, for further consideration in the light of the Board's opinion.

Appeal of Pirate's Cove Marina, IBCA-1018-2-74 (Feb. 25, 1975) 83 I.D. 445

A notice of appeal to the Board of Land Appeals must be dismissed where it is not timely filed within the ambit of 43 CFR 4.411(a), and 43 CFR 4.401, since the requirement of timely filing is jurisdictional.

Lavonne E. Grewell, 23 IBLA 190 (Jan. 6, 1976)

A notice of appeal to the Board of Land Appeals must be dismissed in accordance with 43 CFR 4.411(b), where it was filed within the grace period provided by 43 CFR 4.401(a), but was not transmitted within the appeal filing period.

Michael J. S. Miller, 23 IBLA 224 (Jan. 8, 1976)

On appeals from decisions to proceed with proposed timber sales, when the District Manager tentatively proposes to withdraw the tracts from sale plans in order more fully to examine appellants' allegations and material submitted in a related appeal, the decisions will be set aside and the cases remanded for further consideration.

Alan Winter, Elizabeth Freeman, et al., 23 IBLA 343 (Jan. 21, 1976)

Where a construction contractor failed to appeal from a notice of termination for default which included findings that the contractor's delay in performing the work was not due to excusable causes, but did file a timely appeal from a damage assessment for, inter alia, the increased cost of completing the work, the Board denied the Government's motion to strike paragraphs of the complaint alleging that the contractor's delay was due to excusable causes and that the termination for default was improper since under the so-called Fulford doctrine, which had been held equally applicable to construction contracts, an appeal from a damage or excess cost assessment following a termination for default allows the contractor to contest the propriety of the termination.

Where certain paragraphs of a complaint filed by a construction contractor in an appeal from a damage assessment following a termination for default raised issues as to the propriety of the termination, the Board denied a Government motion to strike those paragraphs based on contentions that the contractor had agreed that delay in completion of the work was not excusable and that the contractor's agreement to a revised date for completion of the work precluded it from raising issues as to the excusability of delays occurring prior to the agreement, since it is well settled

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

that accord and satisfaction is an affirmative defense which must be pleaded and proved and that allegations of accord and satisfaction raise factual issues as to the intent of the parties at the time of the alleged accord.

Appeal of Airco, Inc., IBCA-1074-8-75 (Apr. 6, 1976) 83 I.D. 137

Where an issue which gives rise to an appeal is mooted during the pendency of the appeal, the appeal will not be dismissed where the priority of the application is dependent upon the correctness of the original decision.

Caroline L. Hunt, 26 IBLA 218 (Aug. 17, 1976)

Where an appellant fails to point out some error in a decision or to show that he has wrongly been deprived of some right, and instead limits his statement of reasons for appeal to allegations which are irrelevant and immaterial, the appeal will be dismissed as frivolous.

Duncan Miller, 28 IBLA 62 (Nov. 10, 1976)

Failure to Appeal

Where an offeror failed to take an appeal from a decision issuing a noncompetitive oil and gas lease but erroneously rejecting certain available lands while correctly rejecting other lands in the offer and the offeror failed to retender rental for the erroneously rejected lands, and where the error could be readily apparent to the offeror, and the offeror acquiesced for a year and a half in the lease as issued, such failure precludes the amendment of the lease and the offeror is deemed to have abandoned his preference right as the first qualified applicant to lease the land which was erroneously rejected.

John Oakason, 23 IBLA 336 (Jan. 21, 1976)

Appellant's earlier failure to protest and appeal a decision rejecting his challenge to another grazier's base property commensurability rating, bars him from appealing a subsequent decision rejecting an application containing the same challenge.

Phil J. Hillberry, 24 IBLA 283 (Mar. 31, 1976)

Where a construction contractor failed to appeal from a notice of termination for default which included findings that the contractor's delay in performing the work was not due to excusable causes, but did file a timely appeal from a damage assessment for, inter alia, the increased cost of completing the work, the Board

RULES OF PRACTICE--Continued

APPEALS--Continued

Failure to Appeal--Continued

denied the Government's motion to strike paragraphs of the complaint alleging that the contractor's delay was due to excusable causes and that the termination for default was improper since under the so-called Fulford doctrine, which has been held equally applicable to construction contracts, an appeal from a damage or excess cost assessment following a termination for default allows the contractor to contest the propriety of the termination.

Appeal of Airco, Inc., IBCA-1074-8-75 (Apr. 6, 1976) 83 I.D. 137

Hearings

When an appellant from a decision canceling a headquarters site claim does not assert facts which, taken as true, would constitute the initiation of a claim protected from the effect of a withdrawal, the appellant is not entitled to notice and a hearing on the factual issues pertaining to the establishment of a valid existing right.

Mary C. Polen, 24 IBLA 100 (Mar. 1, 1976)

Cross motions for summary judgment are denied where the Board finds the stipulated record furnishes an insufficient basis for an informed judgment and that a hearing will be required for determining the merits of the entitlement question presented for decision.

Appeals of Armstrong & Armstrong, Inc., IBCA-1061-3-75 and IBCA-1072-7-75 (Apr. 7, 1976) 83 I.D. 148

One who appeals from the rejection of a trade and manufacturing site purchase application and disputes the factual findings and conclusions in the field examiner's report, is not entitled to an opportunity for a hearing on the disputed issues of fact when appellant's assertions of use and improvement, taken as true, do not show use of the land that qualifies her for the right of purchase.

Evelyn M. Bunch, 25 IBLA 44 (May 13, 1976)

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore land in a reclamation withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the withdrawal. Furthermore, even if the withdrawal were revoked and the lands opened to entry, this action could not revive mining claims which were void when located while

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings--Continued

the withdrawal was in effect and the land closed to entry under the mining laws.

J. P. Hinds, et al., 25 IBLA 67 (June 1, 1976) 83 I.D. 275

The regulations do not provide for hearings as a matter of right on trespass violations involving a sec. 15 grazing lessee. For the Board of Land Appeals to exercise its discretion under 43 CFR 4.415 and order a hearing, the appellant must allow facts which, if proved, would entitle him to the relief sought.

Rodney Rolfe and Ronald J. Rolfe, 25 IBLA 331 (June 30, 1976) 83 I.D. 269

It is within the discretion of the Board of Land Appeals to grant a request for a hearing on a question of fact. In order to warrant such a hearing, an appellant must at least allege facts which, if proved, would entitle him to the relief sought.

Sun Studs, Inc., 27 IBLA 278 (Oct. 26, 1976) 83 I.D. 518

Where applicant alleges facts which, even if proved to be true, would not change the legal conclusion of the case, a request for a hearing will be denied.

Frank G. Wells, 28 IBLA 113 (Nov. 15, 1976)

Motions

The Board of Land Appeals may entertain and, where appropriate, grant a motion by the Bureau of Land Management to remand a case to it for further consideration on the question of whether an environmental impact statement must be filed, even though an appellant, who has protested against a negative declaration that no impact statement is required, objects to the remand.

Harold Gillis, 24 IBLA 248 (Mar. 25, 1976)

Where a construction contractor failed to appeal from a notice of termination for default which included findings that the contractor's delay in performing the work was not due to excusable causes, but did file a timely appeal from a damage assessment for, inter alia, the increased cost of completing the work, the Board denied the Government's motion to strike paragraphs of the complaint alleging that the contractor's delay was due to excusable causes and that the termination for default was improper since under the so-called Fulford doctrine, which has been held equally applicable to construction contracts,

RULES OF PRACTICE--Continued

APPEALS--Continued

Motions--Continued

an appeal from a damage or excess cost assessment following a termination for default allows the contractor to contest the propriety of the termination.

Where certain paragraphs of a complaint filed by a construction contractor in an appeal from a damage assessment following a termination for default raised issues as to the propriety of the termination, the Board denied a Government motion to strike those paragraphs based on contentions that the contractor had agreed that delay in completion of the work was not excusable and that the contractor's agreement to a revised date for completion of the work precluded it from raising issues as to the excusability of delays occurring prior to the agreement, since it is well settled that accord and satisfaction is an affirmative defense which must be pleaded and proved and that allegations of accord and satisfaction raise factual issues as to the intent of the parties at the time of the alleged accord.

Appeal of Airco, Inc., IBCA-1074-8-75 (Apr. 6, 1976) 83 I.D. 137

Cross motions for summary judgment are denied where the Board finds the stipulated record furnishes an insufficient basis for an informed judgment and that a hearing will be required for determining the merits of the entitlement question presented for decision.

A stipulation as to procedure only involving two appeals arising under the same contract is disregarded where following the submission of simultaneous briefs under a cross motions for summary judgment procedure, the Board finds some of the terms of the stipulation in which it had acquiesced to be at variance with the rule in the Court of Claims against the splitting of the cause of action under a single and indivisible contract and that adherence to the stipulation could be prejudicial to the contractor in certain foreseeable circumstances. The stay of proceedings provided for by the stipulation with respect to one appeal is therefore vacated and as a corollary to such action the appellant is directed to file its complaint.

Finding that it has inherent discretion to order consolidation of appeals in appropriate cases, the Board orders the consolidation of two appeals which the appellant has asserted involve common questions of law and fact and which, in any event, arose under the same contract, involve the same attorneys and, presumably, the same witnesses.

Appeals of Armstrong & Armstrong, Inc., IBCA-1061-3-75 and IBCA-1072-7-75 (Apr. 7, 1976) 83 I.D. 148

RULES OF PRACTICE--Continued

APPEALS--Continued

Reconsideration

Where in moving for reconsideration of a decision denying its claim for constructive acceleration, the contractor contended that the Bureau's failure to promptly investigate its claim of delay due to unusually severe weather amounted to a denial of a request for a time extension and that the denial plus other actions of Bureau inspectors constituted an order to complete the work by the specified completion date irrespective of excusable delay and thus was an acceleration order, the Board ruled that a denial of a request for a time extension was insufficient in and of itself to constitute constructive acceleration and reviewing the evidence, affirmed the denial of the claim, holding that the actions of the inspectors were regarded as suggestions by the contractor and accepted or rejected depending on whether the suggestions were practical or economical.

Appeal of Iversen Construction Co. (a/k/a ICONCO), IBCA-981-1-73 (Apr. 19, 1976) 83 I.D. 179

Where an offer of land under the Mining Claims Occupancy Act may include land within a right-of-way being condemned for a state highway, and where such evidence was not before the Board when it considered the appeal, a petition for reconsideration may be granted.

Robert P. Starritt (On Reconsideration), 26 IBLA 205 (Aug. 16, 1976)

Where a petition for reconsideration of a previous Board decision applying departmental contest procedures to Alaska Native allotment applications fails to show that the original decision was erroneous in any matter, the original decision will be sustained.

Donald Peters (On Reconsideration), 28 IBLA 153 (Nov. 23, 1976) 83 I.D. 564

Service on Adverse Party

An appeal from a decision of the Bureau of Land Management rejecting a grazing lease application and approving a conflicting application will not be summarily dismissed for failure to serve an adverse party who is not specifically designated as such in the decision appealed from. A decision of the Bureau of Land Management that a conflicting applicant has a preference right to the grazing lease will be affirmed when the applicant appealing fails to indicate any error in the decision.

Jack Sedman, 25 IBLA 277 (June 25, 1976)

RULES OF PRACTICE--Continued

APPEALS--Continued

Standing to Appeal

A city organized under Alaska State law has standing to appeal from the rejection of its application for townsite deeds to land within its city limits, and the awarding of deeds to occupants of the townsite lots at the time of final subdivisional survey.

City of Klawock v. P. H. Andrew, et al., City of Klawock v. State of Alaska, Department of Highways, 24 IBLA 85 (Feb. 25, 1976) 83 I.D. 47

Where a reduction in the authorized use of land leased pursuant to sec. 15 of the Taylor Grazing Act is required in order to conform to the actual grazing capacity of the land, the full amount of that reduction must be imposed immediately rather than gradually. Where acceptance of the reduction is made a condition precedent for the approval of an assignment and for the issuance of a new lease, the assignee and prospective lessee will be held to have the same right to appeal the reduction as the original lessee.

Rube W. Evans, et al., 26 IBLA 15 (July 7, 1976)

A person who admits he has no interest in a mining claim which has been held invalid for failure of the named contestee to file an answer other than he disputes a charge that the land in the contested claim is not mineral in character or that the date of a withdrawal is incorrect is not adversely affected by the decision and has no standing to appeal.

United States v. William Robinson & William McCaskill, Phelps Dodge Corporation, 26 IBLA 137 (Aug. 2, 1976)

One having no right or privilege to the use or possession of Indian lands by way of a lease, permit or license has no standing to appeal under 25 CFR Part 2.

Administrative Appeal of Dean Hansen v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 5 IBIA 250 (Nov. 16, 1976) 83 I.D. 561

Statement of Reasons

Mere accusations by appellant that a company which was awarded an oil and gas lease was involved in fraudulent and corruptive practices, without substantiating this charge, is not a supportable basis for an appeal. A Statement of Reasons which does not point out affirmatively in what respect the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons was filed, and may be dismissed.

Duncan Miller, 25 IBLA 263 (June 24, 1976)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

A statement of reasons which merely contains broadside assertions and does not point out affirmatively in what respect the decision appealed from is in error may be dismissed.

Duncan Miller, 26 IBLA 37 (July 8, 1976)

Statements of reasons for appeal will not be accorded favorable consideration where they do not state with some particularity the exact reason for appeal and the allegations are not supported by evidence.

United States v. Richard and Beverly Weigel, 26 IBLA 183 (Aug. 10, 1976)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error, but merely asserts that earlier filed sodium permit applications were erroneously approved, does not meet the requirements of the Department's rules of practice and is properly dismissed.

James G. Macey, 26 IBLA 191 (Aug. 10, 1976)

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant is not sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a United States interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Jean Oakason, 27 IBLA 41 (Sept. 22, 1976)

Where an appellant fails to point out some error in a decision or to show that he has wrongly been deprived of some right, and instead limits his statement of reasons for appeal to allegations which are irrelevant and immaterial, the appeal will be dismissed as frivolous.

Duncan Miller, 28 IBLA 62 (Nov. 10, 1976)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Earl D. Roberts, 28 IBLA 286 (Dec. 27, 1976)

RULES OF PRACTICE--Continued

EVIDENCE

A Native allotment applicant is not entitled to a hearing as a matter of right inasmuch as the issuance of an allotment is discretionary with the Secretary of the Interior. However, where there does appear to be a dispute as to material facts raised by conflicting affidavits as to the alleged use of land by conflicting applicants, a further field investigation will be directed in an attempt to resolve the factual uncertainties.

Amelia K. Blastervold, et al., 23 IBLA 207 (Jan. 6, 1976)

The Board of Land Appeals will not give favorable consideration to new or additional evidence submitted with an appeal from rejection of a Native allotment satisfactory to it why the evidence was not submitted to the Bureau of Land Management within the 60-day period afforded the applicant to submit a further evidence in support of his application. General, rather than specific, allegations of difficulties in travel and communicating in Alaska are not satisfactory showings of the reason for late filing of such evidence.

Linda L. Walker, 23 IBLA 299 (Jan. 14, 1976)

A request for an evidentiary hearing will be denied where there is no dispute involving a material fact, and there is no chance of development of further material facts which would require a different decision.

Stanley P. McCormick, 23 IBLA 304 (Jan. 16, 1976)

Evidence offered on appeal from an initial decision by an Administrative Law Judge after a hearing in a mining contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. George R. Edeline, et al., 24 IBLA 34 (Feb. 17, 1976)

Evidence tendered on appeal from an adverse decision in a mining claim contest cannot be considered except for the limited purpose of deciding whether a further hearing is warranted.

United States v. Gary C. Fichtner, et al., 24 IBLA 128 (Mar. 3, 1976)

United States v. Robert L. Taylor, 25 IBLA 21 (May 5, 1976)

Where the Government fails to present a prima facie case, a contestee, upon timely motion, may move to dismiss the case and then rest. If, however, he goes forward and presents evidence, that evidence will be considered as part of the entire evidentiary record.

RULES OF PRACTICE--Continued

EVIDENCE--Continued

Therefore, even if the Government has failed to make a satisfactory prima facie case, or the case is weak, contestee's evidence may be used against him to establish that case. Furthermore, where contestee chooses to rebut the case, he must do so by a preponderance of the evidence, bearing the risk of nonpersuasion if he fails.

United States. v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

Evidence tendered on appeal from an adverse decision in a mining claim contest cannot be considered in the absence of a compelling showing that it could not be tendered at the hearing, and even then such evidence may only be considered for the purpose of determining whether a rehearing is warranted.

United States v. Richard C. Reynders and Carol J. Reynders, 26 IBLA 131 (July 30, 1976)

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant is not sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a United States interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Jean Oakason, 27 IBLA 41 (Sept. 22, 1976)

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the Administrative Law Judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

United States v. Arizona Mining and Refining Company, Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS

The doctrine of collateral estoppel will not bar the administrative contest of the validity of five mining claims which, together with another claim, were the subject of previous condemnation actions for the taking of a temporary exclusive easement over the claims, where the issue of the validity of the individual claims was not actually litigated and it was wholly unnecessary for the Court to adjudicate that issue in rendering its judgment.

Equitable estoppel will not operate to bar a mining claim contest or alter its result where it is not shown that some officer of the Government, who was authorized to declare the claims valid, falsely misrepresented to, or concealed material facts from the claimant concerning the validity of the claim with the intention that the claimant should act in reliance thereon, with the result that the claimant was thereby induced to do so, to his ultimate damage.

There can be no waiver of the Secretary's right to contest a mining claim believed to be invalid without a showing of an authority to make such a waiver and an intention to do so.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

Where a contestee makes a timely response to a government complaint in a mining contest, which can reasonably be construed as a general denial of the allegations contained in the complaint, the response will be considered a sufficient answer within the contemplation of the regulations. The allegations then cannot be taken as admitted and the mining claim declared null and void without a hearing.

United States v. Cliff Libby, 24 IBLA 39 (Feb. 19, 1976)

A mining claim is a claim to property which may not be declared invalid without proper notice and an adequate opportunity for an agency hearing in accordance with due process of law. That due process consists of notice and opportunity for hearing, and it suffices if the claimant is afforded the opportunity to be present and heard. The fact that the claimant, after filing a timely answer to the contest complaint, refused to attend that hearing and produce evidence does not vitiate the due process he has received.

United States v. Carl Bellamy, 25 IBLA 50 (May 14, 1976)

Where the Government fails to present a prima facie case, a contestee, upon timely motion, may move to dismiss the case and then rest. If, however, he goes forward and presents evidence, that evidence will be considered as part of the entire evidentiary record. Therefore, even if the Government has failed to make a satisfactory prima facie case, or

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

the case is weak, contestee's evidence may be used against him to establish that case. Furthermore, where contestee chooses to rebut the case, he must do so by a preponderance of the evidence, bearing the risk of nonpersuasion if he fails.

United States v. Alex Bechthold, 25 IBLA 77 (June 1, 1976)

"Final entry." When an amended homestead final proof has been submitted, the term "final entry" in the proviso in section 7, Act of March 3, 1891, 26 Stat. 1098, as amended, 43 U.S.C. § 1165 (1970) refers to the submission, to the proper officials, of the amended final proof and required fees.

Under sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, as amended, 43 U.S.C. § 1165 (1970) which requires issuance of a patent 2 years after receipt upon final proof for a homestead entry, a contest against an entry should not be dismissed where the complaint was filed within 2 years following the submission of additional affidavits amending the entryman's deficient final proof, despite the fact that the receipt in connection with the deficient proof had been issued more than 2 years before filing of the complaint and the receipt had never been canceled or a new receipt issued.

United States v. Joe W. Bryant, 25 IBLA 247 (June 23, 1976)

A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery, and the contestee does not show by a preponderance of the evidence that a discovery has been made.

Where the Government contests a mining claim, official notice of a change in the published price of gold from that given at the hearing, as set forth in the evidence, may be taken by both the Administrative Law Judge and the Board of Land Appeals, but official notice cannot be given to asserted "modern methods of extraction of gold."

United States v. Gold Placers, Inc., 25 IBLA 368 (July 6, 1976)

A federal district court jury verdict in a suit to cancel desert land patents, that the entrymen and their purchaser under an illegal executory contract did not commit fraud against the United States, does not collaterally estop this Department from adjudicating a contest grounded on the illegal executory contract against the purchaser's own entry, because the legal standard applicable in the subsequent contest is different than that in the fraud action--a desert land entry can be subject to cancellation for acts that do not constitute fraud.

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

In the case of a desert land entry contestee who violates the 320-acre limitation on holding desert land because he is the "purchaser" of two other 320-acre entries under an illegal executory contract to convey after patent, all entries held by the "purchaser" are subject to cancellation, and the Department may proceed by way of contest against the "purchaser's" own entry, which was not a subject of the illegal contract.

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976)
83 I.D. 280

Where the Bureau of Land Management determines that an Alaska Native allotment application should be rejected because the land was not used and occupied by the applicant, the BLM shall issue a contest complaint pursuant to 43 CFR 4.451 et seq. Upon receiving a timely answer to the complaint, which answer raises a disputed issue of material fact, the Bureau will forward the case file to the Hearings Division, Office of Hearings and Appeals, Department of the Interior, for assignment of an Administrative Law Judge, who will proceed to schedule a hearing at which the applicant may produce evidence to establish entitlement to his allotment.

Donald Peters, 26 IBLA 235 (Aug. 17, 1976)
83 I.D. 308

Although, in a mining claim contest, the Government may make a prima facie case of no discovery by the testimony of a mineral examiner that he has been on the land in issue and saw nothing of mineral value, a prima facie case is ordinarily not made where it is established that the examiner was not on the land in issue.

In a mining claim contest where a contestee is of the opinion that the Government did not make a prima facie case of no discovery, he may move to have the case dismissed at the conclusion of the Government's case, and then rest. The contest complaint could be dismissed if the Administrative Law Judge rules that no prima facie case had been made of lack of discovery and there is no other evidence in the record to support the charges in the complaint. But if the contestee goes forward after making such a motion to dismiss and presents his evidence, that evidence must be considered as part of the entire record and its probative value will be weighed. Thus, even if the Government has failed to make a prima facie case, evidence presented by the contestee which supports the Government's contest charges may be used against the contestee, regardless of the defects in the Government's case.

In a mining claim contest where the evidence of a valuable mineral deposit, submitted by contestee at a hearing, bearing on the validity of a mining claim, has greater probative weight than that offered by the Government, it is proper to find that contestee has preponderated and to dismiss, without prejudice, the complaint alleging no discovery of a valuable mineral deposit.

United States v. Arizona Mining and Refining Company, Inc., et al., 27 IBLA 99 (Sept. 29, 1976)

Where an attorney files an answer to a contest concerning mining claims on behalf of certain individuals, who, during the pendency of the contest proceedings, transfer their interests in the mining claims to a corporation of which they are major stockholders and Directors, and the attorney represents those individuals and the corporation at the contest hearing, the corporation is bound by the determination reached therein, even though the corporation may not have received actual notice of the contest.

A request for postponement made more than 10 days prior to a hearing is properly denied where there has been no showing of good cause and proper diligence. A contestee's request for postponement is properly denied when (1) a contestee only seeks postponement in order to pursue an exchange of land for the claims; and (2) the Administrative Law Judge rules that the contestant may seek to dismiss the contest if an exchange is contemplated and the contestant does not wish to abate the contest proceedings.

A request for postponement made at a hearing or within 10 days of a hearing is properly denied emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a party's assertion that it has not had adequate opportunity to prepare a defense where such difficulty could have been anticipated before the request was made.

United States v. Mine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

Where the State of Alaska has applied to select certain land and has been given tentative approval of that selection, and thereafter a conflicting native allotment application is filed which is supported only by meager evidence of use and occupancy, it is error to allow the allotment application and to cancel the State's tentative approval and reject the selection application without notice and an opportunity for a hearing in which the State may participate.

State of Alaska, John Nusunginya, 28 IBLA 83 (Nov. 12, 1976)

In a mining contest, a matter not charged in the complaint may only be considered by the Administrative Law Judge if it was raised at the hearing without objection and the contestee was fully aware that the issue was raised.

United States v. Glenn C. Bolinder and L. O. Turner, et al., 28 IBLA 187 (Dec. 6, 1976)
83 I.D. 609

RULES OF PRACTICE--Continued

HEARINGS

A Native allotment applicant is not entitled to a hearing as a matter of right inasmuch as the issuance of an allotment is discretionary with the Secretary of the Interior. However, where there does appear to be a dispute as to material facts raised by conflicting affidavits as to the alleged use of land by conflicting applicants, a further field investigation will be directed in an attempt to resolve the factual uncertainties.

Amelia K. Blastervold, et al., 23 IBLA 207 (Jan. 6, 1976)

When the Department of the Interior finds chat public land within the place limits of a legislative grant-in-aid of the construction of a railroad was mineral in character and the railroad company challenges such finding, a hearing should be granted at which the Department has the obligation of making a prima facie case of mineral character, whereupon the company has the burden of establishing nonmineral character by a preponderance of the evidence.

Southern Pacific Transportation Co., Jay R. Fogal: Lloyd D. Hayes (Intervenor), 23 IBLA 232 (Jan. 9, 1976) 83 I.D. 1

A Native allotment applicant is not entitled to a hearing as a matter of right inasmuch as the issuance of an allotment is discretionary with the Secretary of the Interior. A hearing is not appropriate when there is no offer of proof which if established would impel a different legal conclusion.

Kathryn Eluska, 23 IBLA 284 (Jan. 12, 1976)

An applicant for a Native allotment does not have a right to a formal hearing before an Administrative Law Judge. Hearings may be held in the discretion of the Secretary of the Interior and will not be held where it is unlikely that further evidence will result in a different conclusion.

John C. Knutsen, 23 IBLA 296 (Jan. 12, 1976)

A request for an evidentiary hearing will be denied where there is no dispute involving a material fact, and there is no chance of development of further material facts which would require a different decision.

Stanley P. McCormick, 23 IBLA 304 (Jan. 16, 1976)

An evidentiary hearing is not required where a decision is based upon the facts as stated by the applicant, there is no dispute as to any material fact, and the sole question presented is a legal issue.

Rachael Topsekok, 23 IBLA 314 (Jan. 16, 1976)

RULES OF PRACTICE--Continued

HEARINGS--Continued

Evidence offered on appeal from an initial decision by an Administrative Law Judge after a hearing in a mining contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

A further hearing may be ordered in a mining contest where the record is unsatisfactorily confusing and conflicting on the issue of quantity of minerals to satisfy the discovery tests, a request for the rehearing has been made with an offer of proof which tends to show a new hearing might result in a different finding, and there has been no objection to the request.

United States v. George R. Edeline, et al., 24 IBLA 34 (Feb. 17, 1976)

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore land in a reclamation withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the withdrawal. Furthermore, even if the withdrawal were revoked and the lands opened to entry, this action could not revive mining claims which were void when located while the withdrawal was in effect and the land closed to entry under the mining laws.

J. P. Hinds, et al., 25 IBLA 67 (June 1, 1976) 83 I.D. 275

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing pursuant to the Administrative Procedure Act are required only where there is a disputed question of fact; where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

Beverly Trull, 25 IBLA 157 (June 10, 1976)

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

W. A. Todd, A. B. Johnson, 28 IBLA 180 (Dec. 1, 1976)

In a case where a substantial increase is proposed in charges for a communication site under 43 CFR 2802.1-7(e), the required hearing should be conducted in accordance with the accepted concepts of due process.

American Telephone and Telegraph Company, et al., 25 IBLA 341 (June 30, 1976)

RULES OF PRACTICE--Continued

HEARINGS--Continued

While a determination of the grazing capacity of public lands will not ordinarily be overturned in the absence of a clear showing of error, a hearing may be ordered to resolve conflicts in the opinions of different experts where the lessee has made a substantial and believable offer of proof which, if true, would show error in the Bureau of Land Management's determination.

Rube W. Evans, et al., 26 IBLA 15 (July 7, 1976)

Where there are conflicting claimants to lots in a Native townsite and the record does not clearly reflect who occupied or who was entitled to occupancy of the lots on the date of final subdivisional survey, the Board may, on its own motion, order a hearing.

Leona R. Strang, 26 IBLA 144 (Aug. 2, 1976)

A second hearing will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, and where he actually was represented at the hearing and where nothing has been submitted which suggests that another hearing would produce a different result.

United States v. Richard and Beverly Weigel, 26 IBLA 183 (Aug. 10, 1976)

The fact that assessment work has been performed on a mining claim does not estop the Government from determining the validity of a claim by proper proceedings giving adequate notice and an opportunity for a hearing where there are disputed determinative facts. However, where the claim was located after land has been withdrawn from mining, it is proper for the Bureau of Land Management to declare a claim null and void ab initio without a hearing.

Roy R. Cummins, 26 IBLA 223 (Aug. 17, 1976)

A petition to reopen a hearing for submission of further evidence will be denied when the contestee offers no valid justification for the neglect to offer the evidence, which was or could have been available at the original hearing.

United States v. Ben Hanson, 26 IBLA 300 (Aug. 27, 1976)

Under 43 U.S.C. § 961 (1970) and 43 CFR 2802.1-7(a), an applicant has no right to a hearing in connection with original charges for use and occupancy of a communication site, and a hearing pursuant to a request under 43 CFR 4.415 will not be granted where applicant fails to make specific allegations

RULES OF PRACTICE--Continued

HEARINGS--Continued

or offer specific proof to show in what factors a Departmental appraisal is in error.

Mountain States Telephone and Telegraph Company, 26 IBLA 393 (Sept. 16, 1976) 83 I.D. 332

Rejection of a desert land entry application because the applicant has failed to supply satisfactory evidence of a right to the permanent use of sufficient water to irrigate and reclaim the irrigable portion of the entry will be set aside and the applicant's request for a hearing granted where there is conflicting evidence in the record concerning the sufficiency of the water supply and where the applicant has alleged facts which, if proved, would result in a different conclusion.

Dixie L. Bjornestad, et al., 27 IBLA 201 (Oct. 6, 1976)

A request for postponement made more than 10 days prior to a hearing is properly denied where there has been no showing of good cause and proper diligence. A contestee's request for postponement is properly denied when (1) a contestee only seeks postponement in order to pursue an exchange of land for the claims; and (2) the Administrative Law Judge rules that the contestant may seek to dismiss the contest if an exchange is contemplated and the contestant does not wish to abate the contest proceedings.

A request for postponement made at a hearing or within 10 days of a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a party's assertion that it has not had adequate opportunity to prepare a defense where such difficulty could have been anticipated before the request was made.

United States v. Mine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

PROTESTS

The Board of Land Appeals may entertain and, where appropriate, grant a motion by the Bureau of Land Management to remand a case to it for further consideration on the question of whether an environmental impact statement must be filed, even though an appellant, who has protested against a negative declaration that no impact statement is required, objects to the remand.

Harold Gillis, 24 IBLA 248 (Mar. 25, 1976)

It is improper to dismiss a protest against issuance of an oil and gas lease applied for pursuant to the Act of May 21, 1930, 30

RULES OF PRACTICE--Continued

PROTESTS--Continued

U.S.C. § 301 et seq. (1970), for lands underlying a railroad right-of-way granted under the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented without a reservation for minerals. In such case title to the mineral estate underlying the right-of-way is no longer held by the United States and, therefore, a lease issued pursuant to the 1930 Act is void and must be canceled.

Amerada Hess Corporation, 24 IBLA 360 (Apr. 27, 1976) 83 I.D. 194

WITNESSES

Where the testimony and conclusions of an expert witness are based on careful examination of a mining claim by appropriate scientific methods, they will be accepted into evidence and given appropriate weight regardless of the fact that the witness may not be registered within that particular state as an expert in his field.

Cabot Sedgwick, et al. v. O. M. Parker, 27 IBLA 256 (Oct. 20, 1976)

SCHOOL LANDS

GENERALLY

When title to an entire in-place school section has passed to the state, the United States no longer has a property interest therein and the land is no longer subject to location under the mining laws.

J. P. Hinds, et al., 25 IBLA 67 (June 1, 1976) 83 I.D. 275

An application for patent to school lands in place, pursuant to 43 U.S.C. § 871a (1970), which requests an exclusion of the right-of-way granted under the Act of July 1, 1862, as amended July 2, 1864, must be rejected. Such a patent must be issued "subject to" the right-of-way.

State of Wyoming, 27 IBLA 137 (Sept. 29, 1976) 83 I.D. 364

A State is entitled to indemnity for school lands which it did not acquire by reason of a fractional township. Where the fractional township is created by reason of the incursion of a navigable body of water, the State, by taking indemnity does not thereby grant to the United States the bed of the navigable body of water.

Leonard R. McSweyn, 28 IBLA 100 (Nov. 15, 1976) 83 I.D. 556

The acceptance by a State of other lands as indemnity for lands lying within the meander

SCHOOL LANDS--Continued

GENERALLY--Continued

line of a nonnavigable lake adjacent to the granted upland school section, was a relinquishment of any interest in the adjacent land underlying the lake as an incident to the grant of the school section to the extent such land lies within the linear boundaries of the school section, and precludes the assertion of a State claim to such lands.

State of Montana, 28 IBLA 124 (Nov. 16, 1976)

INDEMNITY SELECTIONS

An application by a State for an indemnity school and land selection is not subject to rejection for the sole reason that the base lands are less valuable than the selected lands.

When a State files an indemnity school land application and selects lands withdrawn for leasable minerals and it is determined that disposal of such lands would unreasonably interfere with operations under the mineral leasing laws, such application may be rejected. However, when the State offers to waive the reserved leasable minerals and to allow reasonable surface entry for development and removal of the minerals, the application should be reevaluated in light of such offer.

State of New Mexico, 24 IBLA 135 (Mar. 8, 1976)

A railroad right-of-way, granted under the Act of July 1, 1862, 12 Stat. 489, as amended by Act of July 2, 1864, 13 Stat. 356, crossing a school section, does not constitute lands "otherwise disposed of by the United States" within the ambit of the school indemnity statutes. Therefore a rejection of an indemnity selection application, offering such base, is proper.

State of Wyoming, 27 IBLA 137 (Sept. 29, 1976) 83 I.D. 364

A State is entitled to indemnity for school lands which it did not acquire by reason of a fractional township. Where the fractional township is created by reason of the incursion of a navigable body of water, the State, by taking indemnity does not thereby grant to the United States the bed of the navigable body of water.

Leonard R. McSweyn, 28 IBLA 100 (Nov. 15, 1976) 83 I.D. 556

SCRIP

(See also Soldiers' Additional Homesteads.)

GENERALLY

Where land had been conveyed to the United States pursuant to the Act of June 4, 1897, ch. 2, 30 Stat. 11, 36, as a base for forest lieu selection rights, and a purported color of title claim was initiated at a time when

SCRIP--Continued

GENERALLY--Continued

the land had not been opened to the operation of the public land laws, the color of title claim is not cognizable as valid under 43 U.S.C. § 1068 (1970).

Estate of John C. Brinton, 25 IBLA 283 (June 28, 1976)

PAYMENT IN SATISFACTION

The right to locate Sioux Half-Breed scrip is a personal right not subject to transfer. However, such scrip may be located by an attorney in fact with authority from the scripee (1) to locate the land in the name in the name of the scripee. Where proper documentation of this authority from the scripee is not presented to the Department with an application to receive cash payment for redemption of the scrip under the Act of Aug. 31, 1964, the application is properly rejected.

Preston Nutter Corporation, 25 IBLA 234 (June 21, 1976)

RECORDATION

The requirement of the Act of Aug. 5, 1955, 69 Stat. 535, that within 6 months of any transfer of scrip rights the holding or claim of right must be presented for recordation by the Department, presupposes a valid transfer. Where the holder of a soldier's additional homestead right shows that the transfer was fraudulent and without his knowledge, the failure of the fraudulent transferee to record the right will not extinguish the right claimed by the innocent holder.

George Rodda, Jr., 27 IBLA 186 (Oct. 4, 1976)

SPECIAL TYPES OF SCRIP

The right to locate Sioux Half-Breed scrip is a personal right not subject to transfer. However, such scrip may be located by an attorney in fact with authority from the scripee (1) to locate the land in the name of the scripee, and (2) to convey that land in the name of the scripee. Where proper documentation of this authority from the scripee is not presented to the Department with an application to receive cash payment for redemption of the scrip under the Act of Aug. 31, 1964, the application is properly rejected.

Preston Nutter Corporation, 25 IBLA 234 (June 21, 1976)

Where land had been conveyed to the United States pursuant to the Act of June 4, 1897, ch. 2, 30 Stat. 11, 36, as a base for forest lieu selection rights, and a purported

SCRIP--Continued

SPECIAL TYPES OF SCRIP--Continued

color of title claim was initiated at a time when the land had not been opened to the operation of the public land laws, the color of title claim is not cognizable as valid under 43 U.S.C. § 1068 (1970).

Estate of John C. Brinton, 25 IBLA 283 (June 28, 1976)

VALIDITY

The right to locate Sioux Half-Breed scrip is a personal right not subject to transfer. However, such scrip may be located by an attorney in fact with authority from the scripee (1) to locate the land in the name of the scripee, and (2) to convey that land in the name of the scripee. Where proper documentation of this authority from the scripee is not presented to the Department with an application to receive cash payment for redemption of the scrip under the Act of Aug. 31, 1964, the application is properly rejected.

Preston Nutter Corporation, 25 IBLA 234 (June 21, 1976)

While the Department of the Interior does not rigidly apply the doctrine of administrative finality so as to bar any subsequent reassertion of soldier's additional homestead scrip rights which have been determined to be invalid, it is incumbent upon an applicant seeking to exercise such rights to submit compelling legal or equitable reasons for reconsideration.

The requirement of the Act of Aug. 5, 1955, 69 Stat. 535, that within 6 months of any transfer of scrip rights the holding or claim of right must be presented for recordation by the Department, presupposes a valid transfer. Where the holder of a soldier's additional homestead right shows that the transfer was fraudulent and without his knowledge, the failure of the fraudulent transferee to record the right will not extinguish the right claimed by the innocent holder.

Upon the death of a soldier-entryman the soldier's additional homestead right vests in his estate, subject to the right of his widow or minor orphan children to appropriate it pursuant to the terms of the statutory grant. Upon the death of the soldier-entryman's widow, and in the absence of minor orphan children, the right becomes absolute in the heirs of the soldier-entryman at the time of his death.

Where an applicant seeks to assert a soldier's additional homestead right which has been determined to be invalid in an earlier proceeding, and does not submit compelling legal or equitable reasons for reconsideration, but merely seeks to reargue the previous determination, the attempted exercise of soldier's additional homestead rights will be rejected.

George Rodda, Jr., 27 IBLA 186 (Oct. 4, 1976)

SECRETARY OF THE INTERIOR

It is unnecessary for the Secretary to consult with men experienced in the exploitation of geothermal steam to make a determination of a known geothermal resources area. It is sufficient that he entertain the opinion that any or all of the elements delineated in 30 U.S.C. § 1001(e) (1970), would engender a belief in such men that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

Robert C. Harper, 24 IBLA 44 (Feb. 23, 1976)

The Secretary of the Interior or his delegate is not obligated to issue a grazing permit or license to an applicant; the issuance of such permits or licenses is committed to agency discretion; therefore, the Secretary may refuse to issue or to renew such license where the applicant, to enhance his grazing operation, has violated the terms of a statute or regulation prohibiting the killing of wildlife.

National Wildlife Federation (Appellant) v. Bolten Ranch, Inc. (Respondent), 24 IBLA 391 (May 3, 1976)

In the absence of specific statutory authority to lease, the Secretary of the Interior has implied authority, as guardian of the public's natural resources, to lease an oil and gas deposit under his jurisdiction when it is in danger of being drained by wells drilled on adjacent land. However, such protective leases may be issued only by competitive bidding.

James L. Santy, 25 IBLA 390 (July 6, 1976)

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States, and he has the authority to extend or correct the surveys of public lands as may be necessary, including the surveying of lands omitted from earlier surveys.

R. A. Mikelson, 26 IBLA 1 (July 6, 1976)

The Secretary of the Interior has complete discretion to determine whether the surface of public land reported as valuable for any leasable mineral should be disposed of and a nonmineral application may be allowed only if it is determined by the proper officer with the concurrence of the Director, Geological Survey, that the disposal of the lands under the nonmineral application will not unreasonably interfere with current or contemplated operations under the Mineral Leasing Act.

The Kemmerer Coal Company, 26 IBLA 127 (July 30, 1976)

SECRETARY OF THE INTERIOR--Continued

Since the Bureau of Land Management has no authority to issue a public land order withdrawing land, such authority existing only in the Secretary, the Under Secretary, and the Assistant Secretaries of the Department of the Interior, recommendations by officers of the Bureau of Land Management relating to withdrawals are not subject to review under the provisions of 43 CFR 4.450-2 or 43 CFR 4.410.

City of Kotzebue, 26 IBLA 264 (Aug. 20, 1976) 83 I.D. 313

The Secretary of the Interior has the authority to determine the validity of mining claims upon adequate notice and opportunity for hearing.

United States v. Mine Development Corp., et al., 27 IBLA 238 (Oct. 18, 1976)

The Secretary has authority to correct an erroneous government survey under 43 U.S.C. § 2 (1970).

Taos Pueblo Tract C, M-36884 (Oct. 28, 1976) 83 I.D. 529

Ordinarily, the signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is equivalent to issuance of the lease and creates a binding contract. However, where a Secretarial Order provides that all oil and gas noncompetitive offers must, prior to issuance of a lease, be referred to Geological Survey for a determination of whether the lands are within a known geological structure, and the authorized officer fails to follow such procedure prior to the signing, such signing is not authorized and, therefore, not binding on the Secretary.

Nola Grace Ptasynski (Supp.) (On Court Remand), 28 IBLA 256 (Dec. 20, 1976)

SEGREGATION

GENERALLY

Whether or not a lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 et seq. (1970), was properly issued, the land in such a lease is segregated from settlement, location or entry, including the acquisition of rights under the Alaska Native Allotment Act, 43 U.S.C. § 270-1 et seq. (1970), until the lease is canceled of record.

The filing of an Alaska State selection for land in an Alaska grazing lease constitutes a petition for determination under 43 CFR 4131.3-1, and upon favorable determination and cancellation of the lease, the State's rights, including segregation of the land in its favor, relate back to the filing of the selection.

Native use and occupancy of land within an Alaska grazing lease does not preclude the

SEGREGATION--Continued

GENERALLY--Continued

State from selecting the land as "vacant and unappropriated" land within the meaning of the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. notes prec. §21 (1970). The initiation of use and occupancy subsequent to the segregation of the land in favor of the State gives an applicant no rights to an allotment.

Sandra M. Pestrikoff, 23 IBLA 197 (Jan. 6, 1976)

It would not be improper to issue a free use permit to a qualified applicant for land included in, and segregated by, an airport lease application where the airport lease applicant is a governmental entity and it consents to the issuance of the free use permit and such issuance is consistent with the public interest.

Good Roads District No. 1, 25 IBLA 123 (June 7, 1976)

FILING OF APPLICATION

A selection application under the Alaska Statehood Act filed in the appropriate Bureau of Land Management office for properly described land segregates the land from all appropriation based upon subsequent application or settlement and location.

John W. Eastland, et al., 24 IBLA 240 (Mar. 25, 1976)

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed state application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the Bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia D. Ellis, 24 IBLA 387 (May 3, 1976)

It would not be improper to issue a free use permit to a qualified applicant for land included in, and segregated by, an airport lease application where the airport lease applicant is a governmental entity and it consents to the issuance of the free use permit and such issuance is consistent with the public interest.

Good Roads District No. 1, 25 IBLA 123 (June 7, 1976)

SEGREGATION--Continued

FILING OF APPLICATION--Continued

The filing by a qualified applicant of a homestead application to enter unappropriated surveyed lands in Alaska segregates the land covered by the application from appropriation. created a valid existing right which is protected from the effect of a subsequent withdrawal which is subject to valid existing rights.

Albert A. Howe, 26 IBLA 386 (Sept. 15, 1976)

The filing by a qualified applicant of an application for an allowed homestead entry of land which is open and available to such entry at the time of filing will operate to segregate the land from subsequent appropriation and invest the applicant with sufficient interest therein to preserve the land from the effect of a subsequent withdrawal which is made subject to valid existing rights.

Richard T. Pope, 27 IBLA 33 (Sept. 20, 1976)

SETTLEMENTS ON PUBLIC LANDS

An Alaska Native allotment applicant may not use the occupancy of public land by forebears to qualify herself for an allotment, nor does the use and occupancy of public land by a forebear, while the land was open to settlement, create any right that excepts the land from a withdrawal in favor of an applicant who initiated independent use and occupancy subsequent to the withdrawal.

Sandra M. Pestrikoff, 23 IBLA 197 (Jan. 6, 1976)

A notice of location filed under the Alaska settlement law, 43 U.S.C. § 687a (1970), regular on its face, for land which is open to such settlement and location, is acceptable for recordation. If a withdrawal follows the filing of a notice of location, the proper inquiry is into the validity of the claim, i.e., whether the locator has by acts of settlement and improvement established a valid existing right protected from the effect of the withdrawal.

Mary C. Polen, 24 IBLA 100 (Mar. 1, 1976)

A settlement claim initiated after a state selection application is filed and the land segregated from appropriation creates no rights in the settler.

John W. Eastland, et al., 24 IBLA 240 (Mar. 25, 1976)

SMALL TRACT ACT

GENERALLY

Department of the Interior policy requires that, in most circumstances, full value be received by the Government in any sale of public land.

The mere filing of a small tract purchase application does not create in the applicant any right or interest in the land.

A notification to a small tract lessee, which was authorized by a memorandum of the Director, Bureau of Land Management, dated Oct. 19, 1955, and approved by the Secretary of the Interior on Nov. 9, 1955, that the lessee could purchase the tract under lease without constructing the improvements required in the option to purchase clause of the lease, if he paid the appraised price shown on the lease within a set time, was an offer to sell the tract by the United States, and exercise of the option by the lessee created a binding contract. Where issuance of the patent was delayed for years because of the contest of a conflicting mining claim, reappraisal to determine changed value since that time is not permissible because there was a binding contract under special authority.

Abraham Epstein, 24 IBLA 195 (Mar. 19, 1976)

The issuance of a lease for public lands under the Small Tract Act, 43 U.S.C. § 682a et seq. (1970), is within the discretion of the Secretary of the Interior. A decision to offer such a lease to a party residing in certain improvements on the public domain without claim of title to the land on which the improvements are located is not an abuse of discretion and will be upheld where the land is primarily valuable for outdoor recreation purposes and is important for purposes of providing public access to recreation opportunities on other public land and, thus, disposal of a fee simple interest would be inconsistent with good land management practices.

No rights are initiated under the Small Tract occupying or improving the land prior to receiving authority to do so.

An applicant for land under the Small Tract Act, 43 U.S.C. § 682a et seq. (1970), cannot acquire any rights in the land by virtue of administrative delay.

Robert Gladwell, 26 IBLA 270 (Aug. 24, 1976)

APPRAISALS

An appellant contending that the rental for a small tract lease (Act of June 1, 1938, as amended) set by BLM appraisal is excessive has the burden of proving by substantial and positive evidence that the appraisal is in error.

Henry O. Woodruff, 24 IBLA 190 (Mar. 18, 1976)

Where an applicant for a small tract lease contends the rental set by the Bureau of Land

SMALL TRACT ACT--Continued

APPRAISALS--Continued

Management is too high, the burden is upon him to prove by positive and substantial evidence that the appraisal is in error.

Opal H. Lofquist, 28 IBLA 111 (Nov. 15, 1976)

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures, and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. Where the lessee fails to do so, the appraisal will stand.

Junction Oil Company, Inc., 28 IBLA 183 (Dec. 6, 1976)

CLASSIFICATION

The issuance of a lease for public lands under the Small Tract Act, 43 U.S.C. § 682a et seq. (1970), is within the discretion of the Secretary of the Interior. A decision to offer such a lease to a party residing in certain improvements on the public domain without claim of title to the land on which the improvements are located is not an abuse of discretion and will be upheld where the land is primarily valuable for outdoor recreation purposes and is important for purposes of providing public access to recreation opportunities on other public land and, thus, disposal of a fee simple interest would be inconsistent with good land management practices.

Robert Gladwell, 26 IBLA 270 (Aug. 24, 1976)

SODIUM LEASES AND PERMITS

GENERALLY

In exercising the Secretary of the Interior's discretionary authority to lease known sodium deposits under the Mineral Leasing Act, an application to have the lands leased is properly rejected where it appears that the land applied for and surrounding environment near a national recreation area may be more severely damaged than most other sites within the known sodium leasing area, there is local governmental and other opposition to the leasing, and Bureau of Land Management and Forest Service officials recommend preparation of an Environmental Impact Statement for the entire known sodium area before leasing further lands in the area.

Eugene V. Simons, 26 IBLA 208 (Aug. 16, 1976)

LEASES

A sodium prospecting permittee who applies for a preference right sodium lease, alleging

SODIUM LEASES AND PERMITS--Continued

LEASES--Continued

with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by sec. 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1970), is entitled to a hearing conducted in accordance with sec. 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1970), before his lease application may be finally rejected for failure to prove such a discovery.

Marine Minerals Corporation, 25 IBLA 153 (June 10, 1976)

In exercising the Secretary of the Interior's discretionary authority to lease known sodium deposits under the Mineral Leasing Act, an application to have the lands leased is properly rejected where it appears that the land applied for and surrounding environment near a national recreation area may be more severely damaged than most other sites within the known sodium leasing area, there is local governmental and other opposition to the leasing, and Bureau of Land Management and Forest Service officials recommend preparation of an Environmental Impact Statement for the entire known sodium area before leasing further lands in the area.

Eugene V. Simons, 26 IBLA 208 (Aug. 16, 1976)

PERMITS

A sodium prospecting permittee who applies for a preference right sodium lease, alleging with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by sec. 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1970), is entitled to a hearing conducted in accordance with sec. 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1970), before his lease application may be finally rejected for failure to prove such a discovery.

Marine Minerals Corporation, 25 IBLA 153 (June 10, 1976)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error, but merely asserts that earlier filed sodium permit applications were erroneously approved, does not meet the requirements of the Department's rules of practice and is properly dismissed.

It is proper to reject sodium permit applications to the extent that they conflict with prior filed applications which have ripened into permits.

James G. Macey, 26 IBLA 191 (Aug. 10, 1976)

SODIUM LEASES AND PERMITS--Continued

PERMITS--Continued

The issuance of sodium prospecting permits is discretionary with the Secretary of the Interior, and the Secretary may refuse to is- purposes if the use of the lands for mineral prospecting and development activities would adversely affect the wildlife habitat.

Where the regulations and Departmental and BLM Manuals do not specifically state how disputes between the Fish and Wildlife Service and the Bureau of Land Management over issuing sodium prospecting permits for lands within wildlife refuge areas are to be resolved, but the Departmental manuals indicate that such decisions are to be made by the Secretary and the BLM Manual directs that such applications be forwarded to the Washington Office, a decision of a State Office rejecting an appliction for a sodium prospecting permit will be set aside and the case remanded for processing in accordance with the Departmental and BLM Manuals.

Vernal E. Bess, et al., 27 IBLA 4 (Sept. 17, 1976)

The Bureau of Land Management may issue a sodium prospecting permit for lands adjacent to area withdrawn for wildlife conservation purposes subject to a stipulation which provides that, in the event of discovery of an exploitable sodium deposit, no preference-right lease will be issued unless hydrologic and other environmental analyses indicate that sodium ore can be removed without a significant adverse environmental impact on the wildlife habitat within the withdrawn areas.

David E. Hughes, 27 IBLA 46 (Sept. 23, 1976)

SOLDIERS' ADDITIONAL HOMESTEADS

GENERALLY

The requirement of the Act of Aug. 5, 1955, 69 Stat. 535, that within 6 months of any transfer of scrip rights the holding or claim of right must be presented for recordation by the Department, presupposes a valid transfer. Where the holder of a soldier's additional homestead right shows that the transfer was fraudulent and without his knowledge, the failure of the fraudulent transferee to record the right will not extinguish the right claimed by the innocent holder.

Upon the death of a soldier-entryman the soldier's additional homestead right vests in his estate, subject to the right of his widow or minor orphan children to appropriate it pursuant to the terms of the statutory grant. Upon the death of the soldier-entryman's widow, and in the absence of minor orphan children, the right becomes absolute in the heirs of the soldier-entryman at the time of his death.

Where an applicant seeks to assert a soldier's additional homestead right which has been determined to be invalid in an earlier proceeding, and does not submit compelling legal or

SOLDIERS' ADDITIONAL HOMESTEADS--Continued

GENERALLY--Continued

equitable reasons for reconsideration, but merely seeks to reargue the previous determination, the attempted exercise of soldier's additional homestead rights will be rejected.

George Rodda, Jr., 27 IBLA 186 (Oct. 4, 1976)

SPECIAL USE PERMITS

Issuance of special land use permits is discretionary, and it is proper to reject an application for such a permit if the use for which the application is made is inconsistent with the objectives of the Bureau of Land Management and programs for public use of the land.

Donald J. Laughlin, d/b/a Riverside Resort & Casino, 25 IBLA 41 (May 12, 1976)

A petition for reconsideration of a decision of the Board of Land Appeals which affirmed the rejection of a special land use permit application will not result in the modification of the earlier decision where that rejection is based upon rational grounds and is consistent with the objectives of the Bureau of Land Management and programs for public use of the land.

Donald J. Laughlin (d/b/a Riverside Resort & Casino) (On Reconsideration), 26 IBLA 154 (Aug. 2, 1976)

The issuance of a special land use permit by the Bureau of Land Management is discretionary, but the Bureau may not issue a permit when the provisions of existing laws may be invoked by the applicant to provide for the proposed use.

A special land use permit may be issued for land being used in trespass for a limited time during pendency of negotiations seeking to effect a land exchange whereby the land occupied in trespass may be patented.

Alfred Gaiser, 26 IBLA 313 (Aug. 30, 1976)

STATE LANDS

The States possess dominion over the beds of all navigable streams within their borders.

An oil and gas offer embracing land in the bed of a navigable river, which is State land, is properly rejected.

Leonard R. McSweyn, 28 IBLA 100 (Nov. 15, 1976) 83 I.D. 556

STATE LAWS

State mining laws relating to discovery may only add to the federal mining law; such laws cannot diminish the federal requirements for

STATE LAWS--Continued

the discovery of a valuable mineral deposit on a mining claim located on federal lands.

United States v. John M. Tappan, Jr., et al., 25 IBLA 1 (May 5, 1976)

Possession of federal land for the period of a state's statute of limitations, which may create title rights in an adverse possessor to nonfederal land, cannot affect the title of land belonging to the United States. Where there is no other acceptable basis for a belief that a claimant has title other than mere adverse possession under such a state law, there is no claim or color of title recognizable under the Color of Title Act, 43 U.S.C. § 1068 (1970).

Manley Rustin and Betty Rustin, 28 IBLA 205 (Dec. 6, 1976) 83 I.D. 617

STATE SELECTIONS
(See also School Lands.)

A selection application under the Alaska Statehood Act filed in the appropriate Bureau of Land Management office for properly described land segregates the land from all appropriation based upon subsequent application or settlement and location.

John W. Eastland, et al., 24 IBLA 240 (Mar. 25, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation, stock-driveway, agricultural research or military purposes.

Idaho Department of Water Resources, 25 IBLA 27 (May 5, 1976)

A railroad right-of-way, granted under the Act of July 1, 1862, 12 Stat. 489, as amended, by Act of July 2, 1864, 13 Stat. 356, crossing a school section, does not constitute lands "otherwise disposed of by the United States" within the ambit of the school indemnity statutes. Therefore a rejection of an indemnity selection application, offering such base, is proper.

State of Wyoming, 27 IBLA 137 (Sept. 29, 1976) 83 I.D. 364

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation purposes.

Idaho Department of Water Resources, 27 IBLA 303 (Oct. 26, 1976)

STATUTES

The Bureau of Land Management has the authority to impose a stipulation on an oil and gas lease covering reserved minerals on patented lands, which would require archaeological investigation and excavations by lessee.

General Crude Oil Company, 28 IBLA 214 (Dec. 10, 1976) 83 I.D. 666

STATUTORY CONSTRUCTION

GENERALLY

One of the functions of the Department of Justice is to construe the laws under which other Government Departments act, 28 U.S.C. § 512 (1970), and when the Department of Justice has advised the Department of the Interior that it has construed a conflict of interest statute affecting Members of Congress and has determined that it is permissible for the spouse of a Member of Congress to hold a grazing lease for national resource lands under certain circumstances, that opinion is binding on this Department, and a grazing lease is properly issued when the applicant has satisfied the criteria set forth by the Department of Justice.

Joseph T. Kurkowski, 24 IBLA 58 (Feb. 23, 1976)

Where a statute designates the Illinois River as a potential addition to the river system, and similarly designates other rivers and their tributaries, the tributaries of the Illinois River are not included as potential additions, under the principle inclusio unius alterius exclusio est.

Walter B. Freeman, et al., 25 IBLA 150 (June 10, 1976)

Sec. 5(b) of the Act of May 25, 1948 (62 Stat. 269) is not applicable to those tribal lands upon which the Flathead Irrigation Project's Kerr Substation and Switchyard are located.

Relocation of Flathead Irrigation Project's Kerr Substation and Switchyard, M-36735 (Supp.) (Sept. 24, 1976) 83 I.D. 346

STOCK-RAISING HOMESTEADS

An application to make a stock-raising homestead entry is properly rejected because the homesteading provisions of the Stock-Raising Homestead Act were impliedly repealed by the Taylor Grazing Act of June 28, 1934.

Les, 24 IBLA 308 (Apr. 14, 1976)

When, as a result of direct proceedings against mining claims, the Department determines that no discovery has been made, the claims must be declared null and void nothwithstanding that they are located on land patented under

STOCK RAISING HOMESTEADS--Continued

the Stock-raising Homestead Act and the contest was privately initiated.

Cabot Sedgwick, et al. v. O. M. Parker, 27 IBLA 256 (Oct. 20, 1976)

SUBMERGED LANDS ACT

GENERALLY

Submerged and filled tidelands passed to the State of Alaska on the date of its admission to the Union, Jan. 3, 1959. Ownership of tidelands subsequently created by avulsive action remains in those persons or entities, including the Federal Government, who held title to the land prior to the avulsive action.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 96 (June 3, 1976)

ACCRETIONS

Submerged and filled tidelands passed to the State of Alaska on the date of its admission to the Union, Jan. 3, 1959. Ownership of tidelands subsequently created by avulsive action remains in those persons or entities, including the Federal Government, who held title to the land prior to the avulsive action.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 96 (June 3, 1976)

SURFACE RESOURCES ACT

VERIFIED STATEMENT

A verified statement required under sec. 5 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 613 (1970), is properly rejected when the mining claim in connection with which it is filed, is declared to be null and void ab initio because it was located on land withdrawn from mineral location for power purposes prior to the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 et seq. (1970), and the land was segregated for purposes other than power development at that time and continuously thereafter.

Roy R. Cummins, 26 IBLA 223 (Aug. 17, 1976)

SURVEYS OF PUBLIC LANDS

GENERALLY

The amount of acreage contained in an oil and gas lease may be reduced where, upon resurvey of the land, it is determined that the area under lease is actually smaller than the area shown by the original survey.

Grace M. Brown, et al., 24 IBLA 301 (Apr. 1, 1976)

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States, and he has the authority to extend or correct the surveys of public lands as may be necessary, including the surveying of lands omitted from earlier surveys.

Title to an island omitted from the original survey but existing at that time in a nonnavigable river remains in the United States and is subject to survey despite the disappearance of the channel separating the island from the lots which were formerly riparian.

R. A. Mikelson, 26 IBLA 1 (July 6, 1976)

AUTHORITY TO MAKE

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States, and he has the authority to extend or correct the surveys of public lands as may be necessary, including the surveying of lands omitted from earlier surveys.

R. A. Mikelson, 26 IBLA 1 (July 6, 1976)

DEPENDENT RESURVEYS

Restoration of a lost corner by means of proportionate measurement in accordance with the record of the original survey is the proper procedure in a dependent resurvey where there is a lack of conclusive evidence as to the location of the original survey corner.

Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fradulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Henry O. Woodruff, 24 IBLA 190 (Mar. 18, 1976)

TAYLOR GRAZING ACT

GENERALLY

An application to make a stock-raising homestead entry is properly rejected because the homesteading provisions of the Stock-Raising Homestead Act were impliedly repealed by the Taylor Grazing Act of June 28, 1934.

Les, 24 IBLA 308 (Apr. 14, 1976)

TETON DAM DISASTER ASSISTANCE ACT

LOSS OF PROPERTY

Congress, by including the word "directly" as the modifier of "resulting" in sec. 2 of the Teton Dam Disaster Assistance Act, Sept. 7, 1976, 90 Stat. 1211, so as to provide that all persons suffering loss of property "directly resulting" from the failure of that dam are entitled to receive full compensation from the United States, limited the scope of the Government's liability for claims under the Act.

The laws of the State of Idaho, utilized pursuant to sec. 3(a) of the Teton Dam Disaster Assistance Act, Sept. 7, 1976, 90 Stat. 1211, provide that remote damages are not compensable. Where alleged damages in lost tourist business are predicated on the washing out of a portion of a highway some 50 miles south of the appellant's resort, such damages are too remote to permit recovery.

Island Park Resorts, Inc., 1 TETON 1 (Dec. 13, 1976) 83 I.D. 680

TIDELANDS

Submerged and filled tidelands passed to the State of Alaska on the date of its admission to the Union, Jan. 3, 1959. Ownership of tidelands subsequently created by avulsive action remains in those persons or entities, including the Federal Government, who held title to the land prior to the avulsive action.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 96 (June 3, 1976)

TIMBER SALES AND DISPOSALS

Where a contract for the sale of vegetative resources (pine nuts) contains a disclaimer of warranty by the vendor (government) as to the quantity of resources sold, the parties are deemed to have contracted on the assumption that there was doubt as to the quantity, and the risk with respect to such factor must be considered to have been assumed by the purchaser as one of the elements of the bargain. Thus, the fact that the quantity of the resource available for harvesting turned out to be less than was expected at the time of contracting is not a basis for a claim to a refund.

Where appellant alleges a loss of vegetative resources (pine nuts) which he purchased occurring subsequent to the time of contracting and prior to severance, due to severe and unusual damage by birds, and the contract of sale provides that the risk of loss shall remain in the government and not pass to purchaser until such vegetative resources have been severed or extracted, appellant's claim for a refund is governed by the risk of loss provision rather than a disclaimer of warranty as to quantity contained in a separate part of the contract.

Alma LeBaron, Jr., 25 IBLA 164 (June 14, 1976)

TITLE

GENERALLY

The Secretary of the Interior does not have authority under the Right-of-Way Oil and Gas Leasing Act of May 21, 1930, 30 U.S.C. § 301 et seq. (1970), to dispose of deposits of oil and gas underlying a railroad right-of-way granted pursuant to the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented under the Act of Apr. 24, 1820, without any reservation for minerals. In such case, title to the mineral estate was included within the grant to the patentee.

Amerada Hess Corporation, 24 IBLA 360 (Apr. 27, 1976) 83 I.D. 194

In public land law, the term "equitable title" is used to describe the interest held by an entryman who, upon full compliance with requirements of the law, has rights in the land superior to all other claims, and is entitled to issuance of patent by the Federal government, which hold only legal title to the land.

Appeal of Eklutna, Inc., 1 ANCAB 190 (Dec. 10, 1976) 83 I.D. 619

TOWNSITES

The date determinative of the rights of occupants of Alaska Native townsite land is the date of final subdivisional survey, not the date of patent; if, at the date of final subdivisional survey, the lots are occupied by non-Natives as well as Natives, the lots will be disposed of under both the non-Native and Native townsite provisions.

City of Klawock v. P. H. Andrew, et al., City of Klawock v. State of Alaska, Department of Highways, 24 IBLA 85 (Feb. 25, 1976) 83 I.D. 47

TRESPASS

GENERALLY

Where timber on Federal land is cut for commercial purposes by one who knows that no patent has issued and who occupies the land either as a mining claimant or as one who is engaged in attempting to defeat the interests of third parties by adverse possession, the taking of the timber constitutes a willful trespass against the interests of the United States. If the taking occurs after a State court has issued its decree quieting title in the timber-taker against all third parties but not against the United States, the taking will nonetheless constitute a trespass if it is determined that legal title had not passed from the United States by operation of law.

Southern Pacific Transportation Co., Jay R. Fogal: Lloyd D. Hayes (Intervenor), 23 IBLA 232 (Jan. 9, 1976) 83 I.D. 1

The term "grazing trespass" as used in the context of the Federal Range Code refers to the

TRESPASS--Continued

GENERALLY--Continued

grazing of livestock on federal land without an appropriate license or permit or in violation of the terms and conditions of a license or permit, and not to any other special meaning ascribed under other laws and circumstances if inconsistent with this usage.

Where a permittee was found to have committed repeated grazing trespasses, a fine of twice the commercial rate for foraging such animals was warranted in accordance with the regulations.

Where a grazing trespass is willful, grossly negligent, or repeated, disciplinary action in the form of suspension, reduction, or revocation, or denial of renewal of a grazing license or permit may be warranted. The regulatory factors, together with any mitigating circumstances, should be considered to determine the extent of the reduction or other disciplinary action.

In determining whether grazing trespasses are "willful," intent sufficient to establish willfullness may be shown by proof of facts which objectively show that the circumstances do not comport with the notion that the trespasser acted in good faith or innocent mistake, or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976) 83 I.D. 185

When the holder of a grazing lease is found to have violated regulations and the terms of his lease because his cattle have trespassed on Federal land, his lease may be canceled when lesser sanctions have proved to be of no effect or when the nature of the violation demands such severity. However, a decision canceling a lease will be set aside where the District Manager relied upon alleged trespasses of which the lessees had no notice and which occurred after a show cause notice had issued, and the case will be remanded for further proceedings.

Rodney Rolfe and Ronald J. Rolfe, 25 IBLA 331 (June 30, 1976) 83 I.D. 269

Where the number of cattle grazing on the Federal range exceeds the number allowed by license and such excess is attributable solely to appellants' lack of control over their cattle and their lack of diligence in taking corrective action after being informed by the Bureau that the excess existed, a finding of willful trespass is warranted.

Cesar and Robert Siard, 26 IBLA 29 (July 8, 1976)

MEASURE OF DAMAGES

Where it has been determined that a grazing trespass on the Federal range is clearly

TRESPASS--Continued

MEASURE OF DAMAGES--Continued

willful, the value of the forage consumed shall be computed and assessed at $4 per animal-unit-month, or twice the commercial rate if such amount is higher. Where the commercial rate is $4.90, the assessment of damages shall be at the rate of $9.80 per animal-unit-month.

Cesar and Robert Siard, 26 IBLA 29 (July 8, 1976)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

GENERALLY

Under the facts alleged the coal mining operations conducted by Peabody Coal Company within the Navajo Indian Reservation and Navajo-Hopi Joint Use Area in Arizona were neither acquisitions nor programs or projects undertaken by Federal agency or with Federal financial assistance within the meaning of sec. 101(6) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646 (42 U.S.C. § 4601 et seq.), so as to allow the appellants' benefits under the Act.

Uniform Relocation Assistance Appeal of Numerous Navajo Persons Who Reside on Black Mesa in Arizona, 1 OHA 292 (Mar. 15, 1976)

Where act authorizing Department of Interior to accept donation of real property requires the property to be vacant before acceptance of donation former tenants are not entitled to relocation benefits.

Uniform Relocation Assistance Appeal of Sidney Gelb, 2 OHA 59 (Sept. 22, 1976)

ADMINISTRATIVE REVIEW AND APPEALS

Protestants will not be denied benefits to which they may be entitled under the Relocation Act for failure to meet procedural requirements in submitting their protest on appeal where the issue of their eligibility is inextricably a part of the determination on appeal concerning the eligibility for such benefits of other persons who have appealed properly.

Uniform Relocation Assistance Appeal of Marvin L. Nunes & Co. (A Partnership of Mrs. Tessie D. Nunes Brazil and Mr. Marvin L. Nunes); Appeal of Mr. Marvin L. and Mrs. Vivian H. Nunes (Tenants); and Protest of Mr. Domingos and Mrs. Navare Machado (Tenants), 2 OHA 35 (Sept. 9, 1976)

UNIFORM REAL PROPERTY ACQUISITION POLICY

Expenses Incidental to Transfer of Title to the United States

Expenses incidental to transfer of title to the United States, reimbursable under § 303(1) of

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM REAL PROPERTY ACQUISITION POLICY--Continued

Expenses Incidental to Transfer of Title to the United States--Continued

the Act and implementing regulations, do not include attorneys' fees and costs in establishing guardianship for the purpose of effecting transfer of title to the United States of lands owned by minor children.

Uniform Relocation Assistance Appeal of Mrs. Joyce R. Borsellino, Guardian for Leroy Albert Borsellino, Salvadore Anthony Borsellino, and Ruthellyn Borsellino, Minor Children, 2 OHA 8 (May 11, 1976)

Deferred leasing brokerage commission, payable out of monthly rentals for the unexpired term of a lease of a building on acquired lands, are not reimbursable as expenses incidental to transfer of title to the United States. Such expenses being related to the business use of the property are properly borne by the owners of the property as business related expenses.

Uniform Relocation Assistance Appeal of H. Mark Solomon and Louis Silverman, 2 OHA 21 (June 14, 1976)

A claim for closing cost is properly denied as to that portion of the claim which is determined to be a finance charge under the Truth and Lending Act (Pub. Law 90-321).

Uniform Relocation Assistance Appeal of Mr. and Mrs. Frank Matney, 2 OHA 92 (Oct. 4, 1976)

UNIFORM RELOCATION ASSISTANCE

Generally

The purchase price for property acquired by the government and relocation assistance benefits are separate and independent of each other and in no case should employees of the government attempt to convince any person to sell his property to the government for less than it is worth by offering relocation assistance benefits as an added inducement.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Daniel W. Walters, 1 OHA 265 (Jan. 12, 1976)

Moving and Related Expenses

Generally

A determination of ineligibility for relocation assistance benefits will be reversed and the cases will be remanded for further adjudication of the claims for benefits where the evidence of record, including that assembled in a hearing on appeals in the matter, shows that the claimants are persons eligible for benefits as persons who were displaced from a

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Generally--Continued

farm operation and from rental housing on the farm property as a result of acquisition of the real property by the United States, despite the fact that their displacements occurred before the expiration of a reserved term of use and occupancy of a portion of the property.

Uniform Relocation Assistance Appeal of Marvin L. Nunes & Co. (A Partnership of Mrs. Tessie D. Nunes Brazil and Mr. Marvin L. Nunes); Appeal of Mr. Marvin L. and Mrs. Vivian H. Nunes (Tenants); and Protest of Mr. Domingos and Mrs. Navare Machado (Tenants), 2 OHA 35 (Sept. 9, 1976)

A claim for moving and related expenses involved in packing household furnishings, by a displaced person who is otherwise employed outside her home and who seeks reimbursement for time lost from such employment as well as costs involved in hiring substitute workers, will be reduced to an amount representing the claimant's wages, computed at the hourly rate of pay, for such time lost from work as the record indicates was required for the packing services, where it appears that the amount claimed exceeds the probable cost of such services by a commercial mover and no evidence has been presented which would warrant allowance of a higher amount as actual reasonable expenses incurred by the displaced person in such activity.

Uniform Relocation Assistance Appeal of Donald F. and Sharon L. Peters, 2 OHA 97 (Nov. 22, 1976)

Moving Expense Allowance

Payment for Moving Expenses

Generally

A claim for rent for interim housing for a period of time between the dislocation and relocation is properly denied where claimants' interim housing is owned by the claimants.

A claim for storage of personal property is properly denied where claimants continued to store property after they had acquired replacement property and storage was no longer necessary.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Frank Matney, 2 OHA 92 (Oct. 4, 1976)

Payments in Lieu of Moving and Related Expenses

Fixed Payment

Generally

In determining average annual net earnings regulations state that net earnings shall not be

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Payments in Lieu of Moving and Related Expenses--Continued

Fixed Payment--Continued

Generally--Continued

reduced by compensation paid by business or farm operations to the owner, his spouse, or his dependents means compensation actually paid and not the value of services rendered without paid compensation.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Harold T. Hall, 2 OHA 102 (Nov. 22, 1976)

Partial Taking of Farm Operation

A claim for a fixed payment under § 202(c) of the Act, in lieu of moving and related expenses under § 202(a) of the Act, is properly disallowed in the case of a partial acquisition of a farm operation where the farm met the definition of a farm operation prior to the acquisition and the property remaining after the acquisition also meets that definition.

Uniform Relocation Assistance Appeal of Mr. Johnny H. Thorp, 2 OHA 24 (July 2, 1976)

Taking of Business Operation

Where the record indicates that an apartment rental business, comprised of two apartment buildings, was operated as a single business, the displaced owner of such business is properly limited to one loss of business claim in lieu of moving and related expenses in connection with displacement from the business.

Uniform Relocation Assistance Appeal of Ms. Dorothea C. Lennox, 2 OHA 18 (June 14, 1976)

Taking of Farm Operation

Appellants are not eligible to receive fixed payment in lieu of moving and related expenses where the alleged tree farm operation did not customarily produce such products or commodities, i.e., timber or wood products, in sufficient quantity to be capable of contributing materially to the appellants' support.

Uniform Relocation Assistance Appeal of Harold W. and Willodene Olson, 1 OHA 273 (Jan. 15, 1976)

A claim for a fixed payment under § 202(c) of the Act, in lieu of moving and related expenses under § 202(a) of the Act, is properly disallowed where the record shows the acquired property was not part of a farm operation of the claimant at the time of its acquisition

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Payments in Lieu of Moving and Related Expenses--Continued

Fixed Payment--Continued

Taking of Farm Operation--Continued

within the meaning of the Act and the Department's implementing regulations.

Uniform Relocation Assistance Appeal of Mrs. Alpha O. Brewer, 2 OHA 1 (Mar. 30, 1976)

Replacement Housing Payment for Homeowners

Generally

Where the comparative method is used for determining replacement housing supplemental benefits under § 203(a)(1)(A) of the Act the determination made by the Government appraiser will not be allowed to stand where the appellants show by competent evidence that the government appraiser has relied on selected dwellings which were not equivalent or substantially the same as the acquired dwelling.

The appellants' claim for additional replacement housing supplemental payment will be sustained within the statutory limits where the appellants prove by a preponderance of the credible evidence the additional cost of purchasing an adequate replacement dwelling in excess of the cost estimated by the government.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Daniel W. Walters, 1 OHA 265 (Jan. 12, 1976)

A determination of replacement housing supplement benefits under § 203(a) of the Act, which is based upon housing survey data which is shown to be inadequate because the Government appraiser relied upon selected dwellings which were not equivalent or substantially the same as the acquired dwelling and he was unwilling to consider newly constructed dwellings despite the admitted scarcity of available, comparable replacement dwellings, will be modified to increase the allowable benefits in accordance with housing study data first reported in the case by another Government appraiser and which was of record and relied upon by the displaced homeowners in contracting for construction of the replacement dwelling.

The acquisition cost of an acquired dwelling is determined at the time of purchase of the property by the United States, and it is not subject to re-evaluation on the basis of a subsequent housing study made for the purpose of determining the reasonable acquisition cost of a comparable replacement dwelling at a later date.

Uniform Relocation Assistance Appeal of Othel (Bill) and Lelah Cooley, 1 OHA 280 (Feb. 11, 1976)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Homeowners--Continued

Generally--Continued

Where it is shown by a preponderance of the competent evidence presented that the appellant has been paid the difference between the cost of a comparable replacement trailer site and the cost of the acquired trailer site the appellant's claim over and above the amount he has been paid is properly denied.

Uniform Relocation Assistance Appeal of Lutcher D. Hines, 2 OHA 12 (June 3, 1976)

A claim for relocation supplemental housing benefits against the National Park Service is properly denied where appellants sold their property to the Government reserving a right of use for a period of years and before appellants moved from the property Congress eliminated replacement housing supplemental benefits as to this class of claimants.

Uniform Relocation and Assistance Appeal of Eugene J. and Barbara E. Hawkes, 2 OHA 28 (July 7, 1976)

A claim for replacement supplemental housing benefit is properly denied where claimants were able to purchase replacement property which was decent, safe, and sanitary at a price less than they were paid for the acquired property.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Frank Matney, 2 OHA 92 (Oct. 4, 1976)

In determining what is a comparable replacement dwelling market value is but one element to be considered and is not necessarily controlling as to whether or not a replacement dwelling is comparable.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Harold T. Hall, 2 OHA 102 (Nov. 22, 1976)

A claim for $184.64 for repair of floor of replacement dwelling and for closet doors to be used in replacement dwelling where necessary to make replacement dwelling decent, safe and sanitary as defined by the Act will be sustained.

Uniform Relocation Assistance Appeal of Mr. Ole Hanson, 2 OHA 106 (Nov. 29, 1976)

Waiver of Benefits

A claim for replacement housing supplement benefits is properly disallowed where the claimants sold their property to the Government, reserving a right of use and occupancy of the

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Homeowners--Continued

Waiver of Benefits--Continued

dwelling thereon for a term of years, and before the expiration of the reserved term of use and occupancy and the claimants' move from the property the congress eliminated replacement housing supplement benefits as to this class of claimants.

Uniform Relocation Assistance Appeal of Nicholas J. and Angeline Spirson, 2 OHA 56 (Sept. 16, 1976)

Replacement Housing Payment for Tenants and Certain Others

A determination of ineligibility for relocation assistance benefits will be reversed and the cases will be remanded for further adjudication of the claims for benefits where the evidence of record, including that assembled in a hearing on appeals in the matter, shows that the claimants are persons eligible for benefits as persons who were displaced from a farm operation and from rental housing on the farm property as a result of acquisition of the real property by the United States, despite the fact that their displacements occurred before the expiration of a reserved term of use and occupancy of a portion of the property.

Uniform Relocation Assistance Appeal of Marvin L. Nunes & Co. (A Partnership of Mrs. Tessie D. Nunes Brazil and Mr. Marvin L. Nunes); Appeal of Mr. Marvin L. and Mrs. Vivian H. Nunes (Tenants); and Protest of Mr. Domingos and Mrs. Navare Machado (Tenants), 2 OHA 35 (Sept. 9, 1976)

Incidental expenses as described in § 203(a)(1)(c) of the Act are includable in the allowable replacement housing payment under § 204(2) of the Act and are not additional thereto.

Uniform Relocation Assistance Appeal of Donald F. and Sharon L. Peters, 2 OHA 97 (Nov. 22, 1976)

WAIVER

There can be no waiver of the Secretary's right to contest a mining claim believed to be invalid without a showing of an authority to make such a waiver and an intention to do so.

United States v. Bert L. Johnson, 23 IBLA 349 (Jan. 21, 1976)

Cashing of an oil and gas rental check, received more than 20 days after due, does not constitute a waiver which would permit

WAIVER--Continued

reinstatement of a terminated lease in violation of 30 U.S.C. § 188(c) (1970), despite wording on the check that "by endorsement this check when paid is accepted in full payment * * *."

Edward Malz, 24 IBLA 251 (Mar. 26, 1976) 83 I.D. 106

WILD AND SCENIC RIVERS ACT

A public sale application, filed pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 43 U.S.C. §§ 1431-1435 (1970), and 43 CFR Part 2785 (1971), embracing lands which the records show to be withdrawn by Public Land Order No. 5490 on Feb. 12, 1975, and withdrawn under the Wild and Scenic Rivers Act on Oct. 2, 1968, is properly rejected.

T. E. Markham, 24 IBLA 5 (Feb. 4, 1976)

The Wild and Scenic Rivers Act withdrew from appropriation under the mining laws the minerals in federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river listed as a potential addition to the Wild and Scenic River System. This withdrawal does not extend to minerals in lands near tributaries of designated rivers unless the tributaries were expressly included.

Where a statute designates the Illinois River as a potential addition to the river system, and similarly designates other rivers and their tributaries, of the Illinois River are not included as potential additions, under the principle inclusio unius alterius exclusio est.

Walter B. Freeman, et al., 25 IBLA 150 (June 10, 1976)

It is not necessary to reject an application filed pursuant to the Act of Feb. 15, 1901, for a right-of-way in an area adjacent to but outside of the boundaries of an area designated as a potential addition to the Wild and Scenic Rivers System, unless it is determined that the project would invade the area or diminish the scenic, recreational, and fish and wildlife values present within the potential wild, scenic, or recreational river area, or there are other justifiable grounds for rejection.

Van Rietmann, 25 IBLA 171 (June 14, 1976)

WILD FREE-ROAMING HORSES AND BURROS ACT

A District Manager's decision denying a grazing permit for 10 domestic horses, based on the fact that such a denial was required for proper range management and for protection of wild horses under the Wild Free-Roaming Horses and Burros Act, 85 Stat. 649-651, will be overruled where evidence presented at a

WILD FREE-ROAMING HORSES AND BURROS ACT--Continued

hearing shows that granting the permit will not interfere with BLM's management of the wild horses under the Act.

Chester Baker, 26 IBLA 257 (Aug. 18, 1976)

Where claimants have filed claims to horses on the public lands under sec. 5 of the Wild Horses and Burros Act, 16 U.S.C. § 1335 (Supp. IV, 1974), and pursuant to the regulations in 43 CFR Subpart 4713, and failed to recover them within a reasonable period of time as provided in gathering authorizations issued by the Bureau of Land Management, the Department has no authority to nullify their claims of ownership; the regulations allow more than one authorization to be obtained; claimants in proper circumstances may obtain further authorizations; and upon compliance with legal requirements may gather and claim their horses and burro.

George B. Shaffner, et al., 26 IBLA 320 (Aug. 30, 1976)

WILDERNESS ACT

Public lands in national forests are presently open to oil and gas leasing regardless of whether they are part of an officially designated wilderness area. However, where the land is within such an established wilderness area, the Secretary of Agriculture has the statutory authority to prescribe reasonable stipulations for the protection of the wilderness character of the land consistent with the use of the land for the purpose of the lease, although only the Secretary of the Interior may close the land to leasing or prohibit the issuance of a lease.

Stanley M. Edwards, 24 IBLA 12 (Feb. 4, 1976) 83 I.D. 33

WILDLIFE REFUGES AND PROJECTS

LEASES AND PERMITS

The drawing of an offer for a noncompetitive lease in a simultaneous oil and gas lease drawing creates no vested rights in the offeror, and the offeror cannot compel the issuance of a lease before an environmental analysis has been made where the Bureau of Land Management has determined that the environmental analysis is necessary for the protection of the resources of the particular area.

Paula J. Jones, 24 IBLA 76 (Feb. 24, 1976)

The issuance of sodium prospecting permits is discretionary with the Secretary of the Interior, and the Secretary may refuse to issue permits for lands withdrawn for wildlife purposes if the use of the lands for mineral prospecting and development activities would adversely affect the wildlife habitat.

WILDLIFE REFUGES AND PROJECTS--Continued

LEASES AND PERMITS--Continued

Where the regulations and Departmental and BLM Manuals do not specifically state how disputes between the Fish and Wildlife Service and the Bureau of Land Management over issuing sodium prospecting permits for lands within wildlife refuge areas are to be resolved, but the Departmental manuals indicate that such decisions are to be made by the Secretary and the BLM Manual directs that such applications be forwarded to the Washington Office, a decision of a State Office rejecting an appliction for a sodium prospecting permit will be set aside and the case remanded for processing in accordance with the Departmental and BLM Manuals.

Vernal E. Bess, et al., 27 IBLA 4 (Sept. 17, 1976)

The Bureau of Land Management may issue a sodium prospecting permit for lands adjacent to areas withdrawn for wildlife conservation purposes subject to a stipulation which provides that, in the event of discovery of an exploitable sodium deposit, no preference-right lease will be issued unless hydrologic and other environmental analyses indicate that sodium ore can be removed without a significant adverse environmental impact on the wildlife habitat within the withdrawn areas.

David E. Hughes, 27 IBLA 46 (Sept. 23, 1976)

WITHDRAWALS AND RESERVATIONS

GENERALLY

A Native allotment application for lands within a wildlife range withdrawal is properly rejected where the applicant did not initiate and complete substantial use and occupancy for a 5-year period prior to the effective date of withdrawal or segregation.

Medina Flynn, 23 IBLA 288 (Jan. 12, 1976)

A public sale application, filed pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 43 U.S.C. §§ 1431-1435 (1970), and 43 CFR Part 2785 (1971), embracing lands which the records show to be withdrawn by Public Land Order No. 5490 on Feb. 12, 1975, and withdrawn under the Wild and Scenic Rivers Act on Oct. 2, 1968, is properly rejected.

T. E. Markham, 24 IBLA 5 (Feb. 4, 1976)

The filing of a notice of location for a homesite will not prevent a withdrawal from attaching to the land if, prior to the effective date of the withdrawal, the locator of the homesite fails to perform the requisite acts of use, occupancy and development necessary to establish a valid existing right excepted from a withdrawal.

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

Where the claimant of a homesite filed his notice of location prior to the segregation of the land by a withdrawal made subject to valid existing rights, and alleges that he initiated the development of improvements sufficient to establish a valid existing right prior to the withdrawal, it is error for the Bureau of Land Management to hold that the location notice was unacceptable for recordation, and the claim may only be canceled following notice to the claimant and an opportunity to demonstrate the establishment of a valid existing homesite claim prior to the withdrawal.

Steven P. Remme, 24 IBLA 23 (Feb. 11, 1976)

National forest lands, some of which are in a wilderness area, a roadless area, or a memorial parkway, which have not been withdrawn from oil and gas leasing, are subject to leasing in the discretion of and under conditions imposed by the Secretary of the Interior. However, where the Secretary of the Interior has specifically determined by formal publication of a memorandum that lands in a certain section of a national forest are to be withheld from leasing, he has exercised his plenary discretion to refuse to issue leases, and subsequent offers for lands in this designated area restricted from leasing are properly rejected.

James Donoghue, et al., 24 IBLA 210 (Mar. 23, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation, stock-driveway, agricultural research or military purposes.

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a state under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 25 IBLA 27 (May 5, 1976)

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore land in a reclamation withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the withdrawal.

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

Furthermore, even if the withdrawal were revoked and the lands opened to entry, this action could not revive mining claims which were void when located while the withdrawal was in effect and the land closed to entry under the mining laws.

J. P. Hinds, et al., 25 IBLA 67 (June 1, 1976) 83 I.D. 275

Where the claimant of a homesite filed his notice of location prior to the segregation of the land by a withdrawal made subject to valid existing rights, and he alleges, and the field reports so indicate, that he initiated the development of improvements sufficient to establish a valid existing right prior to the withdrawal, it is error for the State Office to hold that the withdrawal terminated the claimant's rights.

Sandra L. Lough, Damon M. Blackburn, 25 IBLA 96 (June 3, 1976)

The issuance of sodium prospecting permits is discretionary with the Secretary of the Interior, and the Secretary may refuse to issue permits for lands withdrawn for wildlife purposes if the use of the lands for mineral prospecting and development activities would adversely affect the wildlife habitat.

Where the regulations and Departmental and BLM Manuals do not specifically state how disputes between the Fish and Wildlife Service and the Bureau of Land Management over issuing sodium prospecting permits for lands within wildlife refuge areas are to be resolved, but the Departmental manuals indicate that such decisions are to be made by the Secretary and the BLM Manual directs that such applications be forwarded to the Washington Office, a decision of a State Office rejecting an appliction for a sodium prospecting permit will be set aside and the case remanded for processing in accordance with the Departmental and BLM Manuals.

Vernal E. Bess, et al., 27 IBLA 4 (Sept. 17, 1976)

The Bureau of Land Management may issue a sodium prospecting permit for lands adjacent to areas withdrawn for wildlife conservation purposes subject to a stipulation which provides that, in the event of discovery of an exploitable sodium deposit, no preference-right lease will be issued unless hydrologic and other environmental analyses indicate that sodium ore can be removed without a significant adverse environmental impact on the wildlife habitat within the withdrawn areas.

David E. Hughes, 27 IBLA 46 (Sept. 23, 1976)

Sec. 5(b) of the Act of May 25, 1948 (62 Stat. 269) is not applicable to those tribal lands

GENERALLY--Continued

upon which the Flathead Irrigation Project's Kerr Substation and Switchyard are located.

Relocation of Flathead Irrigation Project's Kerr Substation and Switchyard, M-36735 (Supp.) (Sept. 24, 1976) 83 I.D. 346

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation purposes.

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a state under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 27 IBLA 303 (Oct. 26, 1976)

The Secretary in the exercise of his discretionary authority, may refuse to lease public lands for oil and gas, even though the lands are not withdrawn from oil and gas leasing.

Pinnacle Mining and Exploration Company, Inc., 28 IBLA 249 (Dec. 20, 1976)

AUTHORITY TO MAKE

Since the Bureau of Land Management has no authority to issue a public land order withdrawing land, such authority existing only in the Secretary, the Under Secretary, and the Assistant Secretaries of the Department of the Interior, recommendations by officers of the Bureau of Land Management relating to withdrawals are not subject to review under the provisions of 43 CFR 4.450-2 or 43 CFR 4.410.

City of Kotzebue, 26 IBLA 264 (Aug. 20, 1976) 83 I.D. 313

EFFECT OF

An Alaska Native allotment applicant may not use the occupancy of public land by forebears to qualify herself for an allotment, nor does the use and occupancy of public land by a forebear, while the land was open to settlement, create any right that excepts the land from a withdrawal in favor of an applicant who initiated independent use and occupancy subsequent to the withdrawal.

Sandra M. Pestrikoff, 23 IBLA 197 (Jan. 6, 1976)

EFFECT OF--Continued

Secretarial guideline of Oct. 18, 1973, established that an applicant for an Alaska Native allotment must have completed a 5-year period of substantially continuous use and occupancy prior to withdrawal of the land. This guideline is not subject to the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553 (1970).

Stanley P. McCormick, 23 IBLA 304 (Jan. 16, 1976)

An allotment right is personal to one who has fully complied with the law and the regulations. An applicant for a Native allotment on land withdrawn from appropriation and reserved for lighthouse purposes by Executive Order, subject to valid existing rights, must have completed the 5-year period of substantially continuous use and occupancy prior to the withdrawal in order to be eligible for an allotment.

Rachael Topsekok, 23 IBLA 314 (Jan. 16, 1976)

A color of title application for land which has been withdrawn for a stock-driveway prior to any conveyance in a color of title applicant's chain of title is properly rejected as to such land.

Jeanne Pierresteguy, 23 IBLA 358 (Jan. 23, 1976) 83 I.D. 23

A public sale application, filed pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 43 U.S.C. §§ 1431-1435 (1970), and 43 CFR Part 2785 (1971), embracing lands which the records show to be withdrawn by Public Land Order No. 5490 on Feb. 12, 1975, and withdrawn under the Wild and Scenic Rivers Act on Oct. 2, 1968, is properly rejected.

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

T. E. Markham, 24 IBLA 5 (Feb. 4, 1976)

A notice of location filed under the Alaska settlement law, 43 U.S.C. § 687a (1970), regular on its face, for land which is open to such settlement and location, is acceptable for recordation. If a withdrawal follows the filing of a notice of location, the proper inquiry is into the validity of the claim, i.e., whether the locator has by acts of settlement and improvement established a valid existing right protected from the effect of the withdrawal.

Mary C. Polen, 24 IBLA 100 (Mar. 1, 1976)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

Lands within national parks are not subject to mining location except where specifically authorized by law. 43 CFR 3811.2-2. However, lands within a national forest remain open to location and entry under the mining laws. 16 U.S.C. § 478 (1970). Where mining claims occupy land which has subsequently been withdrawn from the operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of determination. If the claim was not supported at the date of withdrawal for the national park by such a discovery, the land within the claims located in the park would not be excepted from the effect of the withdrawal.

United States v. Wallace W. Vaux, 24 IBLA 289 (Apr. 1, 1976)

Mining claims located on land withdrawn from all forms of entry are null and void from the beginning.

Robert L. Beery, et al., 25 IBLA 287 (June 28, 1976) 83 I.D. 249

The filing by a qualified applicant of a homestead application to enter unappropriated surveyed lands in Alaska segregates the land covered by the application from appropriation. Such an application will be considered to have created a valid existing right which is protected from the effect of a subsequent withdrawal which is subject to valid existing rights.

Albert A. Howe, 26 IBLA 386 (Sept. 15, 1976)

The filing by a qualified applicant of an application for an allowed homestead entry of land which is open and available to such entry at the time of filing will operate to segregate the land from subsequent appropriation and invest the applicant with sufficient interest therein to preserve the land from the effect of a subsequent withdrawal which is made subject to valid existing rights.

Richard T. Pope, 27 IBLA 33 (Sept. 20, 1976)

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio. The finding that appellants have no rights under Sept. 1974 locations does not affect any rights which may have been deeded to them by the holder of a 1952 claim located prior to the time the land was withdrawn from mineral locations.

W. R. and G. R. Strickler, 27 IBLA 267 (Oct. 26, 1976)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

A mining claim located on land at a time when such land was withdrawn from mineral entry is properly declared null and void ab initio.

W. A. Todd, A. B. Johnson, 28 IBLA 180 (Dec. 1, 1976)

Mining claims located when the land has been withdrawn from all public entry by a first-form reclamation withdrawal are properly declared null and void ab initio. Subsequent restoration of the land to mineral entry does not revive the invalid locations.

Floyd W. McCarty, 28 IBLA 246 (Dec. 20, 1976)

A mining claim is properly declared null and void ab initio to the extent it has been located, prior to the enactment of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. §§ 621-5 (1970), on lands withdrawn from mineral location by a power project classification.

Earl D. Roberts, 28 IBLA 286 (Dec. 27, 1976)

POWER SITES

The inclusion of lands belonging to the United States in a proposed power project pursuant to sec. 24 of the Federal Power Act of 1920, 16 U.S.C. § 818 (1970), has the effect of reserving or withdrawing those lands from entry, location, or other disposal under the public land laws of the United States until otherwise directed by the Federal Power Commission or by Congress and until the withdrawal is revoked by the Secretary of the Interior.

T. E. Markham, 24 IBLA 5 (Feb. 4, 1976)

An application to make homestead entry on land embraced in a first-form reclamation withdrawal is properly rejected.

Clifford Prisbrey, 24 IBLA 108 (Mar. 1, 1970)

Lewis M. Eslick, 24 IBLA 237 (Mar. 24, 1976)

A mining claim located before Aug. 11, 1955, on land within an existing power site withdrawal is properly declared null and void as the land was then closed to mineral entry. Claims located prior to that date were not resuscitated by the Mining Claims Rights Restoration Act of 1955.

Beverly Trull, 25 IBLA 157 (June 10, 1976)

A mining claim located before Aug. 11, 1955, on land within an existing power site withdrawal is properly declared null and void as the land was then closed to mineral entry.

WITHDRAWALS AND RESERVATIONS--Continued

POWER SITES--Continued

Void claims located prior to that date were not given life by the Mining Claims Rights Restoration Act of 1955.

David Loring Gamble, Darrel Houglum, 26 IBLA 249 (Aug. 18, 1976)

RECLAMATION WITHDRAWALS

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation, stock-driveway, agricultural research or military purposes.

Idaho Department of Water Resources, 25 IBLA 27 (May 5, 1976)

Mining claims and millsites located upon land which has been previously withdrawn from entry under the mining laws by a first-form reclamation withdrawal are void ab initio. Because Departmental Order No. 2515 delegated authority to revoke such a withdrawal to the Bureau of Reclamation with the concurrence of the Bureau of Land Management, the land remains withdrawn from mining locations when the Bureau of Land Management does not concur with the recommendation of the Bureau of Reclamation to revoke the withdrawal and restore the land to entry.

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore land in a reclamation withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the withdrawal. Furthermore, even if the withdrawal were revoked and the land opened to entry, this action could not revive mining claims which were void when located while the withdrawal was in effect and the land closed to entry under the mining laws.

J. P. Hinds, et al., 25 IBLA 67 (June 1, 1976) 83 I.D. 275

The rejection of an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1970), to open lands in a reclamation withdrawal to mineral location will be affirmed when the applicant fails to submit facts to show the basis for his knowledge or belief that the lands contain valuable mineral deposits. Merely to state the lands contain such deposits is not sufficient.

Joe Ashburn, 27 IBLA 227 (Oct. 12, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under

WITHDRAWALS AND RESERVATIONS--Continued

RECLAMATION WITHDRAWALS--Continued

the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation purposes.

Idaho Department of Water Resources, 27 IBLA 303 (Oct. 26, 1976)

REVOCATION AND RESTORATION

A request for a hearing pursuant to 43 CFR 4.415 for the purpose of taking testimony on the Bureau of Land Management's "continued refusal" to restore land in a reclamation withdrawal to entry will be denied. An appeal from a decision declaring mining claims and millsites null and void ab initio because the lands are in the withdrawal may not serve as the vehicle for petitioning the Secretary of the Interior to revoke the withdrawal. Furthermore, even if the withdrawal were revoked and the lands opened to entry, this action could not revive mining claims which were void when located while the withdrawal was in effect and the land closed to entry under the mining laws.

J. P. Hinds, et al., 25 IBLA 67 (June 1, 1976) 83 I.D. 275

Mining claims are properly declared null and void ab initio when the locations were not perfected by performance of the condition precedent to the opening of withdrawn land to location, entry and patent under the mining laws.

Floyd W. McCarty, 28 IBLA 246 (Dec. 20, 1976)

SPRINGS AND WATERHOLES

Even though springs and waterholes withdrawn from mineral entry by Executive Order No. 107 may not be in use, they nevertheless remain withdrawn so long as they provide sufficient water for public watering purposes.

Robert L. Beery, et al., 25 IBLA 287 (June 28, 1976) 83 I.D. 249

STOCK-DRIVEWAY WITHDRAWALS

A color of title application for land which has been withdrawn for a stock-driveway prior to any conveyance in a color of title applicant's chain of title is properly rejected as to such land.

Jeanne Pierresteguy, 23 IBLA 358 (Jan. 23, 1976) 83 I.D. 23

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under

WITHDRAWALS AND RESERVATIONS--Continued

STOCK-DRIVEWAY WITHDRAWALS--Continued

the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation, stock-driveway, agricultural research or military purposes.

Idaho Department of Water Resources, 25 IBLA 27 (May 5, 1976)

TEMPORARY WITHDRAWALS

In the absence of pertinent statutory directives or regulatory criteria mandating such action, it is improper for the Bureau of Land Management to reject applications filed by a state under the Act of Mar. 15, 1910, for temporary withdrawals of lands for proposed development under the Carey Act, on the basis of the Bureau's determination that the Carey Act does not permit acceptance of a temporary withdrawal application: (1) for the establishment of residence and settlement on noncontiguous tracts of land; (2) if the acreage applied for, when added to desert land entry acreage previously patented to the state's Carey Act project proposer, exceeds the maximum 320 acres permitted to be acquired by one person under 43 U.S.C. § 212 (1970); and (3) when the preliminary plan of development submitted by the state fails to provide adequate assurance of water transmission to the proposed project. Under these circumstances, the Bureau should suspend action on the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 24 IBLA 314 (Apr. 20, 1976)

It is improper for the Bureau of Land Management to reject desert land applications on the basis of directives within a deleted regulation which required that such applications be rejected when the lands described therein were included within a previously filed state application for a temporary withdrawal under the Act of Mar. 15, 1910, which permits the Secretary to temporarily withdraw lands in furtherance of the purposes of the Carey Act. In the absence of a recodification of the directives in the deleted regulation, the bureau should suspend action on all applications filed subsequent to the withdrawal application pending final action on the application for withdrawal.

Kevin D. Ellis, Sylvia D. Ellis, 24 IBLA 387 (May 3, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation, stock-driveway, agricultural research or military purposes.

WITHDRAWALS AND RESERVATIONS--Continued

TEMPORARY WITHDRAWALS--Continued

In the absence of pertinent statutuory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a state under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 25 IBLA 27 (May 5, 1976)

Applications filed by the State of Idaho under the Act of Mar. 15, 1910, for temporary withdrawals of land for proposed development under the Carey Act of 1894, must be rejected where the lands have been previously withdrawn for reclamation purposes.

In the absence of pertinent statutory directives or regulatory criteria for the processing of temporary withdrawal applications for unreserved lands filed by a state under the Act of Mar. 15, 1910, for proposed development under the Carey Act, the Bureau of Land Management should suspend consideration of the applications pending Departmental action to revise and recodify previously deleted regulations which provide guidance for the Administration of the Carey Act and the Act of Mar. 15, 1910.

Idaho Department of Water Resources, 27 IBLA 303 (Oct. 26, 1976)

WORDS AND PHRASES

"Agent." The word "agent," as used in 43 CFR 3102.6-1 requiring statements of authority and disclosure of interests in oil and gas lease offers by agents, does not include an employee who has no discretionary authority and merely acts as the employer's amanuensis in affixing the employer's stamp on a simultaneous oil and gas lease offer entry card, even if it is done outside the actual physical presence of the employer. Any statement required by the Bureau of Land Management to establish the identity of the person who stamped the offeror's name on the card must allow the offeror to provide information to establish whether or not the person was an agent within the meaning of 43 CFR 3102.6-1; merely requiring the offeror to show the stamp was affixed by him or in his presence is not sufficient.

Evelyn Chambers, 27 IBLA 317 (Nov. 4, 1976) 83 I.D. 533

"Any other person." "Any other person" within the context of 43 CFR 4.470 includes one who has standing to protest or appeal a decision of the District Manager. An organization which alleges that one or more of its members

has been adversely affected by such a decision may be considered "any other person" within the meaning of the regulation.

National Wildlife Federation (Appellant) v. Bolten Ranch, Inc. (Respondent), 24 IBLA 391 (May 3, 1976)

"Area covered by unit plan" and "Lands committed and not committed to unit plan." When an oil and gas lease is committed to a cooperative or unit plan of development or operation approved by the Secretary, and when such plan unitizes less than all horizons or depths of said lease, the "area covered" by the plan consists only of the unitized depths or horizons and excludes any depths or horizons not unitized. Such a lease necessarily "embraces lands that are in part within and in part outside of the area covered by such plan" and must be "segregated into separate leases as to the lands committed and the lands not committed." "Lands committed" can only refer to all unitized depths or horizons; "lands not committed" refers to all non-unitized depths. 30 U.S.C. § 226(j) (1970). Solicitor's Opinion, M-36776 (May 7, 1969), no longer followed in part.

Amoco Production Company, 24 IBLA 227 (Mar. 24, 1976)

"Fair market value." As used in 43 CFR 2802.1-7, "fair market value" of a communication site right-of-way is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

"Highest and best use." As to the improver of a communication site during the term of his grant, a determination that the highest and best use of property is for communications purposes must be based on evidence showing it is so reasonably likely the site would be chosen for use as a communication site in the absence of improvements made by the improver that the suitability of the land for communications purposes would affect its general market value.

"Before and after rule." In reappraisal of a communication site, the before and after rule is applied by determining the market value of the government tract including the site at the time of reappraisal, excluding any enhancement to or diminution from the site project, and substracting therefrom the market value of the remaining government property interest, including enhancement or diminution from the project.

American Telephone and Telegraph Company, et al., 25 IBLA 341 (June 30, 1976)

"Final entry." When an amended homestead final proof has been submitted, the term "final entry" in the proviso in sec. 7, Act of Mar. 3, 1891, 26 Stat. 1098, as amended, 43 U.S.C.

§ 1165 (1970) refers to the submission, to the proper officials, of the amended final proof and required fees.

United States v. Joe W. Bryant, 25 IBLA 247 (June 23, 1976)

"Grazing trespass." The term "grazing trespass" as used in the context of the Federal Range Code refers to the grazing of livestock on federal land without an appropriate license or permit or in violation of the terms and conditions of a license or permit, and not to any other special meaning ascribed under other laws and circumstances if inconsistent with this usage.

Eldon Brinkerhoff, 24 IBLA 324 (Apr. 21, 1976) 83 I.D. 185

"Hold by assignment or otherwise." The purchaser of desert land under an illegal executory contract to convey the land subsequent to patent "holds" that land within the meaning of the acreage limitation of sec. 7 of the Desert Land Act, as amended, 43 U.S.C. § 329 (1970).

United States v. Elodymae Zwang, United States v. Darrell Zwang, 26 IBLA 41 (July 9, 1976) 83 I.D. 280

"Innocent purchaser." Where the purchaser from the railroad of unpatented land believed at the time of his purchase that the land was mineral, and there was physical evidence of its mineral character, or if conditions were such that the purchaser should have known then that the land was excepted from the grant to the railroad, he was not a purchaser in good faith within the "innocent purchaser" proviso of sec. 321(b) of the Transportation Act of 1940.

Southern Pacific Transportation Co., Jay R. Fogal; Lloyd D. Hayes (Intervenor), 23 IBLA 232 (Jan. 9, 1976) 83 I.D. 1

"Public Lands." "Public lands" are defined in sec. 3(e) of the Alaska Native Claims Settlement Act, as follows: "Public lands" means all Federal lands and interests therein, located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation, and (2) land selections of the State of Alaska which have been patented or tentatively approved under sec. 6(g) of the Alaska Statehood Act, as amended (72 Stat. 341, 77 Stat. 223), or identified for selection by the State prior to Jan. 17, 1969. The "except" clause contained in the definition of public lands in sec. 3(e) of ANCSA must be read as an expression of Congressional intent not to include particular lands rather than as an "exception" from lands included in the general definition of public lands.

Appeal of Seldovia Native Assn., Inc., 1 ANCAB 65 (July 1, 1976) 83 I.D. 461

WORDS AND PHRASES--Continued

"Signed and fully executed." The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) does not interdict the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

Robert C. Leary, et al., 27 IBLA 296 (Oct. 26, 1976)

Arthur S. Watkins, Robert M. Eckerman, 28 IBLA 79 (Nov. 12, 1976)

WORDS AND PHRASES--Continued

"Such permit." "Such permit" as used in sec. 3 of the Taylor Grazing Act, 43 U.S.C. § 315b (1970), providing for a renewal of a grazing permit does not mean only a permit identical with the terms and provisions of the original.

Hat Ranch, Inc., 27 IBLA 340 (Nov. 4, 1976)
83 I.D. 542

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